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WITH

GENERAL COMMON FORMS AND VARIATIONS

ADAPTED TO ALL THE CIRCUMSTANCES USUALLY OCCURRING;

FORMING A

SYSTEM OF CONVEYANCING;

WITH

DISSERTATIONS, AND PRACTICAL NOTES.

BY THE LATE

W. M. BYTHEWOOD, Esq.

BARRISTER AT LAW.

The Second Edition,

CORRECTED FROM THE LATE EDITOR'S COPY, WITH ADDITIONAL PRECEDENTS AND NOTES.

By THOMAS JARMAN, Esq.

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Bond from One to Two jointly and severally, to abide by the Award of Three Arbitrators, or any Two of them, or of their Umpire. - - - 598

Bond, one to one, on submission to two, or to them and their nominee, or any two of them.

Bond from One to One, to abide by the Award of Two Arbitrators; or of the Two Arbitrators and a Third Person, to be chosen by them, or of any Two of them; and to produce all Deeds and Writings relating to the Matters in dispute: Agreement that a Suit in Chancery shall be dismissed on Execution of the Bond; the Submission to be made a Rule of Court; the Obligee's Costs in the Chancery Suit to be settled by the Arbitrators, as between Attorney and Client, and if they think fit, a Compensation for his Loss of Time and Expenses in endeavouring to sell certain Bonds; Accounts, out of which the Consideration given by the Obligee to the Obligor for a post obit Bond, to be opened by the Arbitrators; the Purchase not to be impeached, but only the Errors, if any, to be rectified; the Arbitrators to proceed ex-parte, in case of the Non-attendance of either of the Parties after Notice; the Arbitrators, if they think fit, to examine the Parties and Witnesses on Oath; the Costs of the Arbitrators, Submission, and Award, and the Costs of the Chancery Suit, to be borne as the Arbitrators shall think proper; and the Arbitrators to have Power from Time to Time, to enlarge the Time for making their Award, until a given Day. - - 601

Bond, five to one, jointly and severally, with joint severances.

Bond from Five to One, jointly and severally, with a Joint Severance of any Four, Three, or Two of them, to abide by the Award of Three Arbitrators, or any Two of them, concerning the Parties' Claims under Three Wills; so as the Award be made by a given Day: but if the Arbitrators should be prevented from making their Award by that Time, then so as the Award be made within Two Months afterwards. The Submission to be made a Rule of Court. 605

(*b*) See a reference to different forms of Obligations, *infra*, p. 594 (*a*).

Bond from the Master of a Ship to a Merchant, who exported a Cargo in the Ship, to abide by the Award of Two Arbitrators, as to Disputes concerning the Value of the Ship and Cargo respectively, in order to ascertain the Proportions each should bear towards paying a Ransom agreed to be given by the Master to the Captain of a French Privateer, who had captured the Ship on her Passage to Hamburgh. *Page* 613 — Bond, on submission to ascertain shares captured ship and cargo should bear of ransom.

Bond from One to One, on submitting to Three Arbitrators, or any Two of them, the Question whether any, and what Damages, have been occasioned by reason of the Lessee having managed a Farm contrary to the Four Years Course of Husbandry, or by reason of any Breaches of any of the Covenants of the Lease, excepting in those Cases in which he has acted pursuant to the Permission of the Lessor; the Arbitrators to settle the Damages to be paid for such Breaches; and to direct the future Course of Husbandry, and whether any, and what Assurances shall be executed by the Parties: with several Agreements by the Obligor, adapted to the Circumstances of the Case; and that the Arbitrators may enlarge the time for making their Award, to an unlimited Period. 615 — Bond, on submitting breaches of husbandry covenants.

Certificate of Parties and Witnesses having been sworn before a Judge. - - - - 623 — Certificate of being sworn before a judge.

Certificate of Parties and Witnesses having been sworn before a Commissioner, or a Master ordinary or extraordinary in Chancery. - - - 625 — Certificate of being sworn before a commissioner or a master in Chancery.

Covenant by Executors and several Legatees to abide by the Award of three Arbitrators, or any Two of them, respecting the Estate and Effects of the Testator, and other Matters in Dispute; and adapted to the Circumstances of a Reference by Co-partners, &c. in pursuance of a Covenant contained in the Articles of Co-partnership, &c. - - - 626 — Covenant by several, to refer disputes respecting testator's effects, &c.

Covenant by Several with Two, to abide by the Award of Three Arbitrators, respecting Disputes between them; under a Penalty severally, for Non-performance. - - - - - 630 — Covenant by several, under a penalty.

Enlargement of time by arbitrators. Enlargement of the Time for making an Award by the Arbitrators, under a Power in the Submission. *Page* 631

Enlargement of time by parties. Enlargement of the Time for making an Award, by the Parties in Difference. - - - 634

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Warrant of attorney to confess judgment. Warrant of Attorney to confess Judgment. - 639

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ASSIGNMENT.

For Assignment, see titles Annuity, Mortgage, Purchase, Settlement, Trusts, and Index to the Precedents, title Assignment.

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Attestation of the Execution of a Deed by a Widow after the Death of her Husband, where she and her Husband had assigned her reversionary Interest in Trust Monies after the Death of another Person, and she voluntarily consented to join with their Assignee in an Assignment to a second Purchaser *Page* 660*a*

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PRECEDENTS

IN

CONVEYANCING.

ANNUITY.

(Continued.)

GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY AND ASSIGNMENT OF DIVIDENDS.

GRANT *of an* ANNUITY *by a Widow for her Life, or for Ninety-nine Years, determinable on her Death, charged on a* MOIETY *of a Freehold Estate, by* APPOINTMENT *under a Power, in a Settlement of the Moiety on her Marriage; Powers of* DISTRESS *and* ENTRY *on the Moiety;* APPOINTMENT *and* DEMISE *of the Moiety, for Ninety-nine Years, if the Grantor should so long live, and* APPOINTMENT *and* ASSIGNMENT *of Dividends of Stock, for the Life of the Grantor, to a Trustee, upon trusts for securing the Annuity; Power to* REPURCHASE *at any Time after the Expiration of Two Years;* DEFEAZANCE *on Judgment to be entered on Warrant of Attorney; Covenant as to* INSURANCE; *and* COVENANT *by the Trustee to produce the Settlement and permit Copies to be taken.*

THIS INDENTURE, made the —— day of ——, [in the —— year of the reign of our Sovereign Lord **George* [**2*] Parties.

GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

the *Fourth*, by the Grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and] in the year of our Lord Christ, 18—; BETWEEN [*grantor*], of, &c. (widow and relict of [*husband*], late of, &c. deceased) of the first part; [*grantee*], of, &c. of the second part; and [*trustee*], of, &c. (a trustee nominated by and on behalf of the said [*grantee*]), of the third part. WHEREAS [*testator*], late of, &c. deceased (father of the said [*grantor*]), by his last will and testament in writing, executed and attested so as to pass freehold property, and bearing date on or about the —— day of ——, 18—, gave and devised, *all* his freehold messuages, tenements, lands, and hereditaments, whatsoever and wheresoever, unto his wife [*widow*] (since deceased), for and during the term of her natural life; *And* from and after the decease of his said wife, he the said testator thereby gave and devised *all* and every his said freehold messuages, tenements, lands, and hereditaments, unto his two children [*son*] and the said [*grantee*] then [*maiden name*], their heirs and assigns for ever, as tenants in common, and not as joint tenants: *And* the said testator thereby directed, that in case of the decease of either of them, his said son and daughter, under the age of twenty-one years, and without leaving lawful issue, then the moiety or share of her or him so dying, should go unto and to the only proper use and behoof of the survivor of them, and his or her heirs and assigns for ever. AND the said testator thereby gave and bequeathed unto his said wife, during the term of her natural life, the interest and produce of —— pounds, three per centum consolidated Bank Annuities, and of —— pounds, three per centum reduced Bank Annuities, (therein called by mistake four per centum reduced Bank Annuities,) then standing in his the testator's name; *And* from and after the decease of his said wife, he the said testator gave and bequeathed the said principal sums of —— pounds, three per centum consolidated Bank Annuities, and —— pounds, three per centum reduced Bank Annuities, unto his said son and daughter, [*son*] and [*grantor*], to be equally divided between them, share and share alike; *subject* nevertheless to his the testator's said son [ ], paying the

Recital of a devise of freehold lands to wife for life;

with remainder to the grantor and her brother in fee as tenants in common;

with cross remainders on the death of either under twenty-one years, and without issue.

Recital of bequest of interest of stock to wife for life;

and after her decease, the principal to grantor and her brother, as tenants in common;

subject to brother paying grantor —— pounds.

GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

*said [*grantor*], immediately after the death of the said [*widow*], the full sum of —— pounds sterling, in regard that he the said testator had already preferred and advanced to his said son monies to (double) that amount; *And* in case of the decease of either of them, the said [*son*] and [*grantor*], before he or she should attain the age of twenty-one years, and without leaving lawful issue, then the said testator directed, that the moiety of her or him so dying of and in the said Bank Annuities, should go and be to the only use and behoof of the survivor of them, his or her executors, administrators, or assigns. *And* the said testator appointed his said wife, and [*executor*], of, &c. and [*other executor*] the younger, of, &c. executrix and executors of his said will. AND WHEREAS the said testator departed this life in or about the month of ——, 18—, without having revoked or altered his said will; which was duly proved by his said executrix and executors, on or about the —— day of ——, 18—, in the prerogative court of the Archbishop of Canterbury, AND WHEREAS by indenture of settlement (*a*), bearing date on or about the —— day of ——, 18—, and made between the said [*husband*] of the first part, the said [*grantor*] (by her then name and description of [*maiden name*], of, &c.) of the second part, and [*two trustees*], of, &c. of the third part, (being the settlement made previously to and in contemplation of the marriage then intended, and which shortly afterwards was duly solemnized, between the said [*husband*] and the said [*grantor*], (then [*maiden name*]), *after reciting* the aforesaid will of the said [*testator*]; *and reciting* that the said [*grantor*] was entitled to the said sum of —— pounds sterling, to be paid to her by the said [*son*], at the decease of the said [*widow*]; *and reciting* that the said [*son*] and the said [*grantor*] (then [*maiden name*]) had attained their respective ages of twenty-one years; *and reciting* that the said [*grantor*], (then [*maiden name*]) had, in manner aforesaid, become possessed of or entitled unto a full and undivided moiety or half part and share of and in the said

which testator had previously advanced to him;

with cross limitations on the death of either under twenty-one years, and without issue

Recital of appointment of executors;

death of testator;

and proof of his will.

Recital of settlement on the marriage of grantor.

(*a*) The conveyance being of a remainder, a bargain and sale for a year, as a preliminary to a release, is unnecessary. *Vide post*, 96.

GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

*several freehold messuages, tenements, lands, and hereditaments, of and belonging to the said testator, and by him so devised as aforesaid, and thereinafter particularly mentioned, subject to the said life estate and interest of the said [*widow*] of and in the same respectively, and to the reversion and inheritance thereof, in fee simple, expectant upon the decease of the said [*widow*]; *And* that the said [*grantor*] had also become, in manner aforesaid, well entitled unto a moiety or half part or share of and in the said sums of —— pounds, three per centum consolidated Bank Annuities, and —— pounds, three per centum reduced Bank Annuities, and the said —— pounds principal money so due from her said brother as aforesaid, subject to such life interest of the said [*widow*] in the same respectively as thereinbefore mentioned; *and reciting* the said then intended marriage, *and* that upon the treaty for the same, it was determined and agreed, by the said parties thereto, that the said moiety or half part and share of the said [*grantor*], (then [*maiden name*],) of and in the said several messuages, tenements, lands, and hereditaments, and also of and in the several stocks or principal sums therein and hereinbefore particularly mentioned, and her said reversionary right and interest of, in, and to the same respectively, should, previously to the celebration of the said marriage, be settled upon and secured to the said [*grantor*], (then [*maiden name*],) and should be granted, and released, and assigned, in trust for, and for the sole and separate use and benefit of, her the said [*grantor*], and be and remain at her sole and absolute disposal, without being in any wise subject or liable to the debts, engagements, or direction or control of her said then intended husband, in manner therein and hereinafter more particularly mentioned: *It was*, by the indenture of settlement now in recital, *witnessed*, that in pursuance and performance of the said agreement, and in consideration of the said then intended marriage, and in consideration of ten shillings to the said [*grantor*], (then [*maiden name*],) paid by the said [*two trustees*], she the said [*grantor*], (then [*maiden name*],) with the privity and consent of her said then intended husband, the said [*husband*], *did* grant, bargain, sell, alien, release, and confirm, unto

Recital of grant of moiety of remainder in fee.

GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

*the said [*two trustees*], and to their heirs and assigns, *All that* full and undivided moiety or half part and share, the whole into two equal parts or shares to be divided, of her the said [*grantor*], (then [*maiden name*],) of and in *All those* three several freehold messuages, tenements, lands, and hereditaments, situate, &c. *And also All* other the freehold messuages, tenements, lands, and hereditaments whatsoever, of her the said [*grantor*], (then [*maiden name*],) in —— aforesaid, or elsewhere in the said county of ——, which she the said [*grantor*], or any person or persons in trust for her, or for her use, was or were seised or possessed of, interested in, or entitled unto, in possession, reversion, remainder, or expectancy, by, under, or in virtue and pursuance of the said last will and testament of her said late father deceased, or otherwise howsoever; *subject* to the said life estate and interest therein of the said [*widow*]: *To hold* the same unto the said [*two trustees*], their heirs and assigns, *To the uses*, and upon and for the trusts, intents, and purposes, and subject to the powers, provisoes, restrictions, declarations, and agreements, therein and hereinafter declared or expressed of and concerning the same; that is to say: *To the use and behoof* of the said [*grantor*], (then [*maiden name*],) her heirs and assigns, until the solemnization of the said then intended marriage; *and* from, and upon, and immediately after the solemnization thereof, *To the use* (*b*) of such person and persons, and upon and for such trusts, and to and for such intents and purposes, and for such estate and estates, and under and subject to such conditions, restrictions, limitations, powers, provisoes, and agreements, and with or without power of revocation and in such sort and manner and form, as she the said [*grantor*], (then [*maiden name*],) by any deed or deeds, writing or writings, to be by her sealed and delivered in the presence of two or more credible and subscribing witnesses, or by her last will and testament in writing, (which she the said [*grantor*] was thereby empowered to make notwithstanding her

to trustees,

to the uses, upon the trusts, &c. afterwards declared;

viz. to the use of grantor, until intended marriage;

After the marriage to such uses as grantor, notwithstanding coverture, should appoint;

(*b*) The charge made by this deed on the real estate takes its legal effect from the above power of appointment. The subsequent interest of the grantor is a trust not executed by the statute of uses.

GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

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said coverture,) or by any writing purporting to be her *last will and testament, and by her to be made and published in the presence of three or more credible and subscribing witnesses, should from time to time give, grant, devise, direct, limit, or appoint, of and concerning the same or any part thereof; such gift, grant, devise, direction, limitation, or appointment, if made during the life of the said [*husband*], to be had, made, and done with the concurrence and approbation of the said [*husband*], testified by his being a party to and executing the same; *And* in the mean time, until such gift, grant, devise, direction, limitation, or appointment should have been so made, and should or should be intended to take effect respectively; *and* as and when such gifts, grants, devises, directions, limitations, and appointments, which should or might be so made, or given, of and relating to or concerning the said messuages, tenements, lands, and hereditaments, or any part thereof, should or might by any possible contingency, or otherwise, cease, and become ended or determined; *and* as to, for, or concerning so much and such part of the said messuages, tenements, lands, and hereditaments, whereof no such gift, grant, devise, direction, limitation, or appointment, should or might be so made as aforesaid, *To the use* of the said [*two trustees*], their heirs and assigns, for the term of the natural life of the said [*grantor*], (then [*maiden name*],) *In trust* for and for the sole and separate use and benefit of her the said [*grantor*], (then [*maiden name*],) and her assigns, freed and absolutely discharged from, and totally independent of, and not in any wise subject or liable to, the debts, engagements, direction, or controul of the said [*husband*], her then intended husband; and to be at her own sole and absolute disposal, for and during the term of her natural life; and her receipts alone to be, and to be from time to time deemed, taken, and considered as good and sufficient releases and discharges for the rents, issues, and profits, of the said trust premises, and every or any part thereof, notwithstanding her said coverture: *And* from and after the decease of her the said [*grantor*], (then [*maiden name*],) then *To the use* and behoof of him the said [*husband*], for the term of his natural life; *And* from and immediately after the decease of the said

appointment, if made during husband's life, to be with his concurrence;

in default of appointment, and so far as it should not extend,

to the use of trustees during grantor's life,

in trust for her separate use:

remainder, to the use of husband for life; with remainder to other uses therein mentioned.

[*husband*], to such other uses, and upon such other trusts *as in the said indenture of settlement now in recital are mentioned. And it was by the said indenture of settlement *further witnessed*, that in pursuance and further performance of the said therein and hereinbefore recited agreement, and for the considerations thereinbefore mentioned, the said [*grantor*], (then [*maiden name*],) with the privity and consent of the said [*husband*], *did* sell, assign, transfer, and set over, unto the said [*two trustees*], their executors, administrators, and assigns, *All that* the said moiety or half part and share of her the said [*grantor*], (then [*maiden name*],) of or in and to the said several stocks or principal sums of —— pounds, three per centum consolidated Bank Annuities, and —— pounds, three per centum reduced Bank Annuities, then late the property of the said testator [*testator*]; *And* the said —— pounds, principal money, so given and bequeathed as aforesaid to her the said [*grantor*], upon, or after the decease of the said [*widow*], as therein and hereinbefore is mentioned; (*c*) *And* all dividends and interest, which should or might at any time or times after the decease of the said [*widow*] arise and become due and payable, for, or from, and upon the same stocks or principal sums and money, and every or any part or parcel of the same respectively; *To have*, hold, receive, perceive and take the said moiety or half part and share of and in the said two several stocks or capital sums and the said principal money, and the interest and dividends of, and produce from, the same respectively; and all and singular the premises thereby bargained and sold, or mentioned and intended so to be, and any part and parcel thereof, with the appurtenances, unto the said [*two trustees*], their executors, administrators, and assigns; nevertheless *Upon the trusts*, and to and for the intents and purposes, and subject to the powers, provisoes, restrictions, declarations, and agreements hereinafter declared or expressed of and concerning the same; that is to say; *In trust* for, and to the end, intent, and purpose, that the same, and every or any part or parcel

GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

Recital of assignment to trustees,

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of moiety of reversionary interest in stocks,

and a principal sum,

and all dividends thereon,

upon the trusts, &c. afterwards declared;

viz. in trust for such persons, &c. as grantor should appoint;

(*c*) As to assignments of reversionary *choses en action* by married women, *vide post*, Vol. 5, p. 566.

GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

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thereof, should and might by them the said trustees be paid and assigned, or transferred and disposed of, to such person or persons, and in such shares and proportions, and subject to such directions and limitations, and with or *without power of revocation, and in such manner and form as she the said [*grantor*], (then [*maiden name*],) by any deed or deeds, writing or writings, to be by her sealed and delivered in the presence of two or more credible and subscribing witnesses, or by her last will and testament in writing, (which she was thereby empowered to make notwithstanding any such coverture as aforesaid,) such deed, will, limitation, or appointment, if made during the life of the said [*husband*], to be with the consent of the said [*husband*], testified by his being a party to the same as aforesaid, or by any writing purporting to be her last will and testament, so to be by her made and published in the presence of the like number of credible and subscribing witnesses, should from time to time give, grant, bequeath, declare, limit, or appoint, of and concerning the same: *and* in the mean time, and until such gift, grant, bequest, declaration, limitation, or appointment, should have been so made; *and* as and when the same respectively should or might by contingencies or otherwise cease and become ended or determined; *and* as to so much and such part of the said thereby assigned premises, whereof no such gift, grant, bequest, declaration, limitation, or appointment should be so made as aforesaid, *In trust* for and for the sole and separate use and benefit of the said [*grantor*], (then [*maiden name*],) for and during the term of her natural life, independent of and not in any wise subject or liable to the debts, engagements, direction, intermeddling, or controul of the said [*husband*]; and to be at her own sole and absolute disposal; and her receipts alone to be, notwithstanding any such coverture as aforesaid, from time to time deemed good and sufficient releases and discharges for the same: *And* from and after the decease of the said [*grantor*], (then [*maiden name*],) *In trust* for the said [*husband*], for the term of his natural life: *And* from, and immediately after his decease, then upon such other trusts as in the now reciting indenture of settlement are mentioned. AND WHEREAS the marriage

appointment, if made during husband's life, to be with his consent:

in default of appointment, and so far as it should not extend,

in trust for the separate use of grantor during her life:

after decease of grantor,

in trust for husband for life;

and after his decease, upon other trusts therein mentioned.

between the said [*husband*] and the said [*grantor*] was duly solemnized shortly after the execution of the said recited indenture of settlement, since which time the said [*widow*], and also the said [*husband*], have departed *this life. And whereas the said [*two trustees*] have both departed this life; and there being no power in the said indenture of settlement for the appointment of new trustees in their place, a suit hath been instituted by the said [*grantor*] in the High Court of Chancery, for the purpose of having trustees appointed of the aforesaid settled property by the said Court, in the room of the said [*two trustees*]: *And* the sums of —— pounds, three per centum consolidated Bank Annuities, and —— pounds, three per centum reduced Bank Annuities, (being one equal half part of the hereinbefore mentioned sums of —— pounds) three per centum consolidated Bank Annuities, and —— pounds, three per centum reduced Bank Annuities) have, under the direction of the said Court of Chancery, been transferred into the name of the Accountant general of the same Court. And whereas no appointment hath hitherto been made by the said [*grantor*] of or concerning her aforesaid moiety of and in the said messuages, tenements, lands, and hereditaments comprised in the said indenture of settlement, and thereby conveyed and settled as aforesaid, or any part thereof, or of or concerning the said stocks, funds, and monies, by the same indenture of settlement assigned and settled as aforesaid, or any part thereof respectively, or of or concerning the dividends, interest, or annual proceeds of the same stocks, funds, and monies, or of any part of such dividends, interest, or annual proceeds. And whereas the said [*grantee*] hath contracted and agreed with the said [*grantor*], for the absolute purchase of an annuity or yearly rent charge of —— pounds, for and during (*d*) the

GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY AND ASSIGNMENT OF DIVIDENDS.

[*9]

Recital of marriage; death of testator's widow, and of grantor's husband.

Recital of death of trustees; and there being no power for appointing new trustees, that a suit has been instituted for that purpose;

and that the settled stocks were standing in the name of the Accountant General.

Recital that grantor had made no appointment of the lands and trust monies.

Recital of contract for purchase of annuity for grantor's life;

(*d*) To avoid the question, stated *ante*, Vol. 1, pp. 587—596, whether a rent *pur auter vie* out of a freehold estate can be effectually limited to the grantee, his executors, administrators, and assigns, it seems preferable to limit the annuity or rent-charge "for and during the term of ninety-nine years, if the said [*grantor*] should so long live, at or for the price, &c." *ut supra*.

To avoid the question, whether a rent *pur auter vie* can be limited to executors, it seems preferable to grant it FOR YEARS DETERMINABLE ON DEATH.

GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

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to be secured on settled moiety of lands,

and upon dividends of stocks,

by appointment, grant, demise, and assignment thereof,

and by a warrant of attorney to confess judgment.

Recital of warrant of attorney to confess judgment in an action of debt.

Recital of agreement for re-purchase.

Recital that grantor was to pay expenses of

term of the natural life of her the said [*grantor*] at or for the price or sum of —— hundred pounds: *And* it was upon the treaty for such purchase agreed between the said *[*grantor*] and the said [*grantee*], that the said [*grantor*], should secure such annuity or yearly rent charge, upon the said moiety or equal half part, [whereof or whereto she the said [*grantor*] is so seised or entitled as hereinbefore mentioned], of and in the said messuages, tenements, lands, and hereditaments, comprised in the hereinbefore recited indenture of settlement, and thereby conveyed and settled as aforesaid, or expressed or intended so to be, with their appurtenances; and upon the dividends of the said sums of —— pounds, three per centum consolidated Bank Annuities, and —— pounds three per centum reduced Bank Annuities, comprised in the same indenture of settlement, and thereby assigned and settled as aforesaid: the said security to be made by such appointment, grant, demise, and assignment as are hereinafter respectively expressed and contained: *And* the said [*grantor*] also agreed to execute a warrant of attorney for confessing a judgment against her the said [*grantor*], as a collateral security for the said annuity or yearly rent-charge: *And* accordingly, by a deed poll or instrument in writing, under the hand and seal of her the said [*grantor*], bearing even date with these presents, she the said [*grantor*] hath duly empowered certain attornies, in the said deed-poll named, to confess a judgment against her the said [*grantor*], in his Majesty's Court of Common Pleas, at Westminster, in or as of (Trinity) term last, (Michaelmas) term next, or some other subsequent term, in an action of debt, at the suit of the said [*grantee*] for the sum of [*double the purchase money*] pounds, besides costs of suit: *And* upon the treaty for such purchase as aforesaid, it was agreed between the said [*grantee*] and the said [*grantor*], that the said annuity or yearly rent-charge of ——— pounds, should be subject to redemption or re-purchase, upon the terms and in the manner hereinafter in that behalf mentioned: *And* (*d*) it was further agreed between them and the said [*grantor*] and

(*e*) *Vide* Vol. 1, p. 460, (*b*).

the said [*grantee*], that the expenses of preparing and perfecting the several securities for the same annuity or yearly rent-charge, and of enrolling a memorial of the same securities, shall be borne and paid by the said *[*grantor*]; who also agreed to enter into such covenants as to insurance as hereinafter are expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said recited agreement on the part of the said [*grantor*] in this behalf, and in consideration of the said sum of —— hundred pounds of lawful money of Great Britain and Ireland, in Bank of England notes (*f*), to the said [*grantor*] paid by the said [*grantee*], upon or immediately before the sealing and delivery of these presents, the receipt of which said sum of —— hundred pounds she the said [*grantor*] doth hereby acknowledge; and of and from the same, and every part thereof, doth acquit, release, and discharge the said [*grantee*], his heirs, executors, administrators, and assigns, and every of them, for ever, by these presents; *And* in pursuance, and by virtue, and in exercise of the power or authority to her for this purpose reserved or given by the hereinbefore recited indenture of settlement, and of all other powers and authorities whatsoever her the said [*grantor*] enabling in this behalf, *She* the said [*grantor*] [*hath* appointed; *and*] by this present deed or writing, sealed and delivered by her the said [*grantor*], in the presence of and attested by the two credible persons, whose names are hereunto subscribed as witnesses, attesting her sealing and delivery of these presents, *doth* appoint; *And* the said [*grantor*], in respect of her aforesaid life estate in the moiety, and other hereditaments hereinafter mentioned, [*hath* given, granted, and confirmed, *and*] by these presents *doth* give, grant, and confirm, unto the said [*grantee*], his executors, administrators, and assigns henceforth, for and during (*g*) the natural life of her the said [*grantor*], ONE annuity or yearly rent-charge of —— pounds of lawful money of

GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

[*11]

securities and memorial thereof,

and enter into covenants as to insurance.

Testatum.

Appointment

of an annuity or rent-charge for grantor's life,

(*f*) *Vide* Vol. 1, p. 460, (*a*).

(*g*) If for years determinable on the grantor's death, say, "for and during the term of ninety-nine years, if the said [*grantor*] should so long live, ONE annuity, &c." *ut supra.*

FOR YEARS DETERMINABLE ON DEATH.

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Great Britain and Ireland, free and clear of and from, and without any deduction and abatement thereout, for or in respect of any now existing, or hereafter to be imposed, parliamentary or other taxes, charges, rates, assessments, or impositions * whatsoever; to be issuing and payable out of and from, and to be charged and chargeable upon, *All that* the said moiety or equal half part [of or to which the said [*grantor*] is so seised or entitled under the aforesaid indenture of settlement, as hereinbefore is mentioned and recited,] of and in *All those* the said messuages, tenements, lands, hereditaments, and all and singular other the premises in the said indenture of settlement described as aforesaid, and whereof such moiety or equal half part was so thereby conveyed and settled as hereinbefore is mentioned and recited; and of and in the appurtenances to the same premises belonging: To HAVE, hold, receive, perceive, and take the said annuity or yearly rent-charge of —— pounds, unto and by the said [*grantee*], his executors, administrators, and assigns, henceforth for and during (*h*) the natural life of the said [*grantor*], to be paid and payable to him the said [*grantee*], his executors, administrators and assigns, at or in the Common Dining Hall of Lincoln's Inn, in the county of Middlesex, by four equal quarterly payments; that is to say, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year; the first of such quarterly payments to become due and be made on the —— day of —— next, without any deduction whatsoever: *And* if the said [*grantor*] should happen to die on any other day than one of the said quarterly days of payment, then the said [*grantor*] *doth* hereby appoint, grant, and agree, that a proportional part of the current quarterly payment of the said annuity or yearly rent-charge shall be paid to the said [*grantee*], his executors, administrators, or assigns, for the interval which shall have elapsed from the last preceding quarterly day of payment, up to, and until, and inclusive of, the day of

[*12] to be charged upon a moiety of freehold premises.

Habendum of annuity.

To be payable quarterly,

with proportional part to grantor's death.

FOR YEARS DETERMINABLE ON DEATH.

(*h*) If for years determinable on the grantor's death, say, "for and during the term of ninety-nine years, if the said [*grantor*] should so long live, to be paid, &c." *ut supra.*

such decease of her the said [*grantor*]. PROVIDED ALWAYS, *and it is hereby agreed* between and by the said [*grantor*] and [*grantee*], and the said [*grantor*] *doth* by this present deed or writing, so by her sealed *and delivered, and so attested as aforesaid, appoint, grant, agree, and declare, that if the said annuity or yearly rent-charge of —— pounds, hereby and by the aforesaid warrant of attorney of even date herewith secured as aforesaid, or intended so to be, or any part thereof, should at any time or times be in arrear or unpaid, for the space of twenty days next after any of the days or times hereinbefore appointed for payment thereof, then and in every such case, it shall be lawful for the said [*grantee*], his executors, administrators, or assigns, to enter and distrain into and upon the aforesaid moiety (*i*) of and in the said messuages, tenements, lands and hereditaments, hereby charged with the said annuity or yearly rent charge of —— pounds, and into and upon every or any part or parcel thereof; and to take, lead, drive, carry away, and impound, and in pound to detain and keep the distress or distresses which shall be then and there found; and in due time after the taking of such distresses, to sell and dispose of the same, or otherwise to act therein according to law, in the same manner, and as effectually in all respects, as in the cases of distresses taken by landlords for rent reserved upon leases for years: to the end and intent, that by all or any of the ways and means hereinbefore mentioned, the said annuity or yearly rent charge of —— pounds, or any part thereof, so in arrear or unpaid as aforesaid, and all costs, charges, and expenses which shall be occasioned or incurred by reason of such non-payment, may be fully paid, satisfied, and discharged: *And further*, that if the said annuity or yearly rent-charge of —— pounds, so secured as aforesaid, or intended so to be, or any part thereof, should be in arrear or unpaid for the space of forty days next after any of the days or times hereinbefore appointed for payment thereof, then and in every such case, although there should not have

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[*13]

Power of distress on a moiety of freehold lands, by appointment under a power in a conveyance to uses, for securing an annuity for the grantor's life:

and power of entry.

(*i*) As to a power of distress, granted by a person having an interest in lands with others, *vide* Vol. 1, pp. 612, 613, 614.

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been any demand made thereof, or of the arrears thereof (*k*), it shall be lawful for the said [*grantee*], his exe-
[*14] *cutors, administrators, or assigns, to enter into and upon, and to hold, possess, and enjoy the said messuages, tenements, lands, and hereditaments, so charged with the payment of the said annuity or yearly rent charge as aforesaid, and every or any part or parcel thereof; and to receive and take the rents, issues, and profits thereof, and of every or any part or parcel thereof, to and for his and their own use and benefit, until he or they shall therewith and thereby, or otherwise, be fully paid and satisfied the said annuity or yearly rent charge of —— pounds, and the arrears thereof, due at the time of such entry as last aforesaid, and afterwards to become due during the time of his or their being in possession of the aforesaid premises; together with all costs, charges, and expenses which he or they shall sustain or incur by reason of any such nonpayment as last aforesaid; and such possession taken to be without impeachment of waste. AND THIS INDENTURE ALSO WITNESSETH, that in pursuance and performance of the aforesaid agreement, on the part of the said [*grantor*] in this behalf; and for more effectually securing the due and punctual payment of the said annuity or yearly rent charge of —— pounds, at the times and in manner aforesaid, and for the considerations aforesaid; and in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, to the said [*grantor*]

Further testatum.

Demand necessary previous to entry for nonpamyent of rent-charge, unless the contrary be stipulated.

(*k*) There is a distinction between a *distress*, and a power of *entry*; *vide* Vol. 1, p. 625; for previous to an entry for nonpayment of a rent-charge, there must be an actual demand on the ultimate day limited for the payment, and must be alleged expressly to have been so made in pleading: Gilb. Rents, 73, 75; 6 Bac. Abr. 25, 26; Gwil. ed. *Rent*, (I) 1; that is, in the above instance on the fortieth day after the day the rent becomes due. Wms. n. 1 Saund. 287, (16). Co. Litt. 202, a. But by the special agreement of the parties, as in the above form, an entry may be made for default of payment of a rent-charge without any demand of it. 5 Co. 40, b; Gilb. Rents, 81. See further as to the power of entry, Vol. 1, 626. The stat. 4 Geo. II. c. 28, s. 2, only extends to "cases between landlord and tenant." [As to which, *vide post*, Vol. 4, p. 423.]

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in hand paid by the said [*trustee*], upon or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; and in pursuance and by virtue, and in exercise of the power or authority to her for this purpose reserved or given by the hereinbefore recited indenture of settlement, and of all other powers and *authorities whatsoever, enabling her in this behalf, *She* the said [*grantor*], at the request and by the direction of the said [*grantee*], testified by his sealing and delivering these presents, [*hath* appointed, *and*] by this present deed or writing so by her the said [*grantor*] sealed and delivered and so attested as hereinbefore mentioned, *Doth* appoint; *And* the said [*grantor*], in respect of such her life estate as aforesaid, [*hath* granted, bargained, sold, and demised, *and*] by these presents *doth* grant, bargain, sell, and demise, unto the said [*trustee*], his executors, administrators, and assigns, ALL THAT the said moiety or equal half part of or to which the said [*grantor*] is so seised or entitled, and over which she hath such power of appointment as hereinbefore mentioned, of and in the said messuages, tenements, lands and hereditaments, whereof such moiety as aforesaid is so hereinbefore charged with the said annuity or yearly rent charge of —— pounds as aforesaid, or intended so to be, with their appurtenances, TO HAVE AND TO HOLD the said moiety or equal half part of and in the said messuages, tenements, lands and hereditaments, with their appurtenances, unto the said [*trustee*], his executors, administrators, and assigns, henceforth for and during the term of ninety-nine years, to be computed from the day next before the day of the date of these presents, and to be fully complete and ended, without impeachment of or for any manner of waste, if the said [*grantor*] should so long live, UPON and for the trusts, intents, and purposes, and subject to the proviso hereinafter expressed and contained of and concerning the same term; that is to say, IN TRUST to permit and suffer the said [*grantor*], her heirs, appointees, or assigns, to receive and take the rents, issues, and profits of the said demised moiety, hereditaments, and premises, so long as the said annuity or yearly rent charge of —— pounds, secured as aforesaid, or intended so to be, shall be paid,

[*15]

Appointment and demise, under a power in a conveyance to uses,

of a moiety of freehold lands to a trustee.

Habendum for ninety-nine years, if the grantor should so long live;

upon trusts hereinafter contained, viz.

in trust to permit grantor to receive rents so long as annuity is paid.

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at the times and in the manner hereinbefore appointed for payment thereof: *And* IN TRUST, that if the said annuity or yearly rent charge of —— pounds, or any part thereof, should at any time be in arrear or unpaid for the space of sixty days next after any of the days or times hereinbefore appointed for payment thereof, then

[*16]

and on default in paying annuity for sixty days, trustee, out of rents, or by mortgage or sale, to raise sufficient money to pay arrears of annuity, and all costs, &c.

*and in every such case, and so often as the same shall happen, the said [*trustee*], his executors, administrators, or assigns, shall, by and with, and out of the rents, issues, and profits of the said demised moiety, hereditaments, and premises, or of any part thereof, or by demising, leasing, mortgaging, or selling the same hereditaments and premises, or any part thereof, for all or any part of the said term of ninety-nine years, or by such other ways or means as to him the said [*trustee*], his executors, administrators, or assigns, shall seem expedient, levy and raise so much money as shall be sufficient, from time to time, to pay and satisfy the said annuity or yearly rent charge of —— pounds, or so much thereof as shall for the time being happen to be in arrear or unpaid, and all costs, charges, damages, and expenses which the said [*grantee*], his executors, administrators, or assigns, shall sustain or incur by reason or in consequence of such non-payment of the said annuity or yearly rent charge as aforesaid, and which the said [*trustee*], his executors, administrators, or assigns, shall sustain or incur in the execution of the trusts hereby reposed in him or them, or otherwise in relation thereto; and shall apply the monies so to be raised in answering the purposes for which the same monies are hereby made raisable. *And* IN TRUST to permit and suffer the said [*grantor*], her heirs, appointees, or assigns, to receive and take the residue and surplus of the said rents, issues, and profits, to and for her or their own use and benefit.

and in trust to permit grantor to receive residue of rents.

PROVIDED ALWAYS *and it is hereby agreed and declared* between and by the said parties to these presents, and the said [*grantor*] doth by this present deed or writing, so sealed and delivered, and so attested as aforesaid, appoint and declare, that when and so soon as all and singular the trusts and purposes hereinbefore expressed concerning the said term of ninety-nine years, shall be fully performed or otherwise satisfied, then and thenceforth the same term

Proviso for cesser of term.

shall cease and determine, any thing hereinbefore contained to the contrary notwithstanding. AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of and performance of the hereinbefore recited agreement on the part of the said [*grantor*] in this behalf; and for the consideration aforesaid; and in consideration of the further sum of ten *shillings of lawful money of Great Britain, to the said [*grantor*] in hand paid by the said [*trustee*] upon or before the execution of these presents, the receipt whereof is hereby acknowledged; and in pursuance, and by virtue, and in exercise of the power or authority to her the said [*grantor*] reserved and given by the hereinbefore recited indenture of settlement, and of all other powers and authorities whatsoever, enabling her the said [*grantor*] in this behalf, *She* the said [*grantor*], at the request and by the direction of the said [*grantee*], testified as hereinbefore mentioned, [*hath* appointed, *and*] by this present deed or writing so by her the said [*grantor*] sealed and delivered, and so attested as hereinbefore mentioned, *doth* appoint; *And* the said [*grantor*], in respect of her aforesaid life interest in the hereinbefore mentioned dividends, interest, or annual proceeds, [*hath* bargained, sold, assigned transferred, and set over, *and*] by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*trustee*], his executors, administrators, and assigns, ALL the dividends, interest, or annual proceeds henceforth, during the life of her the said [*grantor*], to accrue due, for the said several sums of —— pounds, three per centum consolidated Bank Annuities, —— pounds, three per centum reduced Bank Annuities (being one equal half part of the aforesaid sums of —— pounds, three per centum consolidated Bank Annuities, and —— pounds, three per centum reduced Bank Annuities;) and the dividends, interest, or annual proceeds of all other the stocks or funds comprised in the aforesaid indenture of settlement, and thereby settled as aforesaid; and of the stocks, funds, or securities to be purchased by virtue of the power of varying securities in the said indenture contained, and henceforth to accrue due, during the life of the said [*grantor*](*l*). AND all the right, title, trust, interest, pro-

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Further testatum.

[17*]

Appointment and assignment to trustee,

of dividends of stock for the life of grantor.

All the right, &c.

[(*l*) *Vide post*, Vol. 5, p. 564, *n*.]

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perty, benefit, claim, and demand whatsoever, at law and in equity, of her the said [*grantor*], by virtue of the said recited will and settlement, otherwise howsoever, of, in, to, or out of the same dividends, interest, or annual proceeds, or any part thereof. And the said [*grantor*] doth hereby irrevocably nominate, constitute and appoint the said [*trustee*], his executors, administrators and assigns, to be *the true and lawful attorney and attornies of her the said [*grantor*], for her and in her name, but upon and for the trusts and purposes hereinbefore mentioned, to ask, demand, sue for, recover, and receive, the said dividends, interest, or annual proceeds hereinbefore appointed and assigned, or any part thereof: *And* upon payment thereof, or of any part thereof, from time to time, to give, sign, and execute, in such name or names as aforesaid, proper and effectual receipts, acquittances, and discharges for the same; *And* upon nonpayment of the same dividends, interest, or annual proceeds, or any part thereof, for her the said [*grantor*], and in her name to commence, carry on, and prosecute any action or actions, suit or suits, or any other proceedings, in any court of law or equity, or other court of judicature whatsoever, for the purpose of recovering and compelling payment of the same dividends, interest, or annual proceeds, or any part thereof; *And generally* for her the said [*grantor*], and in her name, or in the name or names of the said attorney or attornies, to do, perform, and execute all such acts, matters, and things, as the said attorney or attornies shall think requisite or proper for the purposes aforesaid: *She* the said [*grantor*] hereby agreeing to ratify and confirm all such acts and things as the said attorney or attornies shall lawfully do, or cause to be done, in or about the premises, by virtue hereof. To have, hold, receive, and take the said dividends, interest, or annual proceeds hereinbefore by these presents appointed and assigned as aforesaid, or expressed, and intended so to be, unto and by the said [*trustee*], his executors, administrators, and assigns, henceforth, for and during the natural life of the said [*grantor*], Upon the trusts nevertheless, and to and for the intents and purposes hereinafter declared and expressed of and concerning the same, that is to say; In trust that he the said

Power of attorney to receive and recover dividends.

[18*]

Habendum on the dividends.

Upon trusts, afterwards declared; viz.

In trust to per-

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[*trustee*], his executors, administrators, and assigns, do and shall permit and suffer the said [*grantor*], her appointees or assigns, to receive the said dividends, interest, or annual proceeds, until default shall have been made in payment of the said annuity or yearly rent-charge of —— pounds, so hereby, and by the said warrant of attorney of even date herewith, secured as aforesaid, or any part there-*of, for the space of twenty days next after any of the days or times hereinbefore appointed for payment thereof as aforesaid: *And* from and immediately after such default shall have been made as last aforesaid, then and from thenceforth, IN TRUST that he the said [*trustee*], his executors, administrators, or assigns, do and shall from time to time, receive and take the said dividends, interest, or annual proceeds during the life of the said [*grantor*], or until the said annuity or yearly rent-charge, so secured as aforesaid, shall be redeemed or repurchased, conformably to the proviso hereinafter in that behalf contained: *And* do and shall, out of the said dividends, interest, or annual proceeds, from time to time, pay to the said [*grantee*], his executors, administrators or assigns, the said annuity or yearly rent-charge, or so much thereof as shall be for the time being in arrear; and all such costs, charges, and expenses, as shall be sustained or incurred by the said [*grantee*], his executors, administrators or assigns, in consequence of the nonpayment of the said annuity or yearly rent-charge, and as shall be sustained or incurred by the said [*trustee*], his executors, administrators, or assigns, in the execution of the trusts herein expressed, or otherwise in relation thereto: *And* do and shall permit and suffer the residue and overplus (if any) of the said dividends, interest, or annual proceeds, after answering and satisfying thereout the trusts and purposes hereinbefore mentioned, to be from time to time received and taken by the said [*grantor*], her appointees or assigns, for her or their absolute benefit. AND THE SAID [*grantor*] doth hereby for herself, her heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantee*] his executors, administrators, and assigns, that she the said [*grantor*], her heirs, executors, or administrators, or some or one of them shall and will, from time

mit grantor to receive dividends until default in paying annuity;

[*19]

and after default,

in trust to receive dividends during grantor's life, or until annuity is repurchased;

and to pay annuity and all costs thereout;

and to permit residue to be received by grantor.

Covenant to pay annuity for the grantor's life.

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[*20]

to time (*m*), during the natural life of her the said [*grantor*], or until such redemption or repurchase of the said annuity or yearly rent-charge as hereinafter mentioned, well and *truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly rent-charge of —— pounds so secured as aforesaid, or intended so to be, and eventually such proportional part thereof as aforesaid, at the times hereinbefore mentioned and appointed for payment thereof, in manner aforesaid, and according to the true intent and meaning of these presents. AND THE SAID [*grantor*] doth for herself, her heirs, executors, and administrators, covenant, promise, agree, and declare, with and to the said [*grantee*], his executors, administrators, and assigns, by these presents, that (notwithstanding any act, deed, matter, or thing whatsoever, by her the said [*grantor*], or any other person or persons whomsoever, had, made, done, or committed, or knowingly or willingly suffered to the contrary,) she the said [*grantor*], now, at the time of the sealing and delivery of these presents, hath full power and authority to appoint, grant, and confirm unto the said [*grantee*], his executors, administrators, and assigns, the said annuity or yearly rent-charge of —— pounds, so secured as aforesaid, in manner aforesaid; and to charge the same upon such moiety of her the said [*grantor*] as aforesaid, of and in the said messuages, tenements, lands, and hereditaments hereinbefore described, with their appurtenances; and to appoint, grant, bargain, sell, and demise the same moiety of and in the said messuages, tenements, lands, and hereditaments, unto the said [*trustee*], his executors, administrators, and assigns, for the said term of ninety-nine years, determinable as aforesaid, upon the trusts hereinbefore expressed; and to appoint, bargain, sell, and assign the said dividends, interest, or annual proceeds (*n*) of the aforesaid sums of —— pounds, three per centum

Covenant for title;

FOR YEARS DETERMINABLE ON DEATH.

(*m*) If for years determinable on the grantor's death, say, "during the said term of ninety-nine years, if the said [*grantor*] should so long live, or until," &c. *ut supra*.

[(*n*) Notice of this charge should be given to the trustees in whose names the stock is standing. *Vide post*, Vol. 5. p. 579.]

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consolidated Bank Annuities, and —— pounds three per centum reduced Bank Annuities, and of such other stocks or funds as aforesaid, unto the said [*trustee*], his executors, administrators, and assigns, upon the trusts hereinbefore expressed, in manner aforesaid, and according to the true intent and meaning of these presents: AND [that (*o*)] free and clear, and freely and clearly acquitted, *exonerated, and discharged, or otherwise by her the said [*grantor*], her heirs, executors, or administrators, well and sufficiently saved, defended, and kept harmless, and indemnified of, from, and against all and all manner, of former and other rights, titles, charges, and incumbrances whatsoever: AND MOREOVER, that she the said [*grantor*], her executors and administrators, and all and every persons and person having, or lawfully claiming, or who shall or may have, or lawfully claim, any estate, right, title, trust, inheritance, or interest whatsoever, at law or in equity, of, in, to, or out of the said moiety of her the said [*grantor*], of and in the hereinbefore mentioned messuages, tenements, lands, and hereditaments, or any part thereof, or of, in, to, or out of the dividends, interest, or annual proceeds of the aforesaid sums of —— pounds, three per centum consolidated Bank Annuities, and ——

for acquittal and indemnity;

[*21]

for further assurance.

(*o*) This pronoun is used emphatically. You shall enjoy the estate, and *that* free from incumbrances. Dr. Johnson, in his Dictionary, has extracted a passage from the Whole Duty of Man, in which the word is used in the same sense: "We must direct our prayers to the right ends; and *that* either in respect of the prayer itself, or the things we pray for." It has, however, been thought that the word has crept into the common form of covenants through inadvertence, Sug. Ven. 489, 5th ed. and is now generally omitted. The ancient, and, it seems, the correct form of this covenant was, "And *that* the said messuages, &c. now are, and henceforth for ever hereafter shall remain, continue, and be unto the said A. B. his heirs and assigns, free and clear," &c. See 1 Bridgeman's Conveyances, 236, &c. 5th ed. Conveyancer's Light, 419, &c. 5th ed. And in other instances the form was the same as that now generally used; "And free and clear, &c." See 1 Bridgeman, 230, 238, 258, &c. The first books of Precedents in which the word *that* is used in the same manner as in the above precedent, are Horsman's Conveyancing, and Lilly's Conveyancer: see 2 Horsm. 267, &c. ed. 1744. Lilly, 501. &c. 3d ed.

The word *that* in the covenant for acquittal and indemnity generally omitted.

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pounds, three per centum reduced Bank Annuities, or of such other stocks or funds as hereinbefore mentioned; or any part of such dividends, interest, or annual proceeds, shall or will, from time to time, and at all times hereafter during the continuance of this security, upon every reasonable request of the said [*grantee*], his executors, administrators, or assigns, but at the costs and charges of the said [*grantor*], her heirs, executors, ad-
[*22] *ministrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every or any such further and other lawful and reasonable acts, deeds, things, appointments, grants, demises, assignments, instruments, and assurances in the law whatsoever, for further, better, more perfectly, absolutely, and effectually charging and securing the said annuity or yearly rent-charge of —— pounds upon the said moiety of and in the said messuages, tenements, lands, and hereditaments, and upon the said dividends, interest, or annual proceeds of the aforesaid sums of —— pounds three per centum consolidated Bank Annuities, and —— pounds three per centum reduced Bank Annuities, and of such other stocks or funds as aforesaid, in manner aforesaid, and according to the true intent and meaning of these presents; *As* by him the said [*grantee*], his executors, administrators, or assigns, or his or their, or any or either of their counsel learned in the law, shall or may be lawfully and reasonably advised, devised, or required, and be tendered to be made done or executed. PROVIDED ALWAYS *and it is hereby agreed and declared* by and between the said [*grantee*], and the said [*grantor*], and particularly the said [*grantee*], doth hereby agree and declare, that if at any time after the expiration of two years from the date of these presents, the said [*grantor*], her appointees or assigns, should be desirous of redeeming or repurchasing the said annuity or yearly rent-charge of —— pounds, secured by these presents, and by the said warrant of attorney, of even date herewith; and of such her or their desire, should give six calendar months' notice in writing to the said [*grantee*], his executors, administrator, or assigns, to be left at his or their most usual place of residence; or in lieu of such notice, should pay to the said [*grantee*], one half-year's

Power to repurchase at any time after two years.

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payment in advance of the said annuity or yearly rent-charge of —— pounds, then and in such case, from and immediately after the expiration of the said six calendar months for which such notice shall be given, or upon making such half yearly payment in advance as aforesaid, and upon payment by her the said [*grantor*], her appointees or assigns, to the said [*grantee*], his executors, administrators, or assigns, of all arrears which shall be then due of *the said annuity or yearly rent-charge of —— pounds, [*23] and also of all such costs, charges, and expenses, as shall or may be for the time being due or payable, unto the said [*grantee*], his executors, administrators, or assigns, or unto the said [*trustee*], his executors, administrators, or assigns, under or by virtue of these presents, and upon payment by the said [*grantor*], her appointees or assigns, to the said [*grantee*], his executors, administrators, or assigns, of the sum of [*original purchase money*] pounds, as and for the price or consideration money for such redemption or repurchase as aforesaid; then and thenceforth the said annuity or yearly rent-charge of —— pounds, hereby, and by the aforesaid warrant of attorney of even date therewith, secured as aforesaid, and the powers and remedies hereinbefore given and reserved for enforcing payment thereof, and the said term of ninety-nine years, determinable as aforesaid, hereby created in the aforesaid messuages, tenements, lands, and hereditaments, and the covenant hereinbefore contained on the part of the said [*grantor*] for payment of the same annuity or yearly rent-charge, shall thereupon respectively cease and determine; and the said [*trustee*], his executors, administrators, or assigns, shall thereupon, at the request, costs, and charges of the said [*grantor*], her appointees or assigns, reassign and transfer the said dividends, interest, or annual proceeds of the aforesaid sums of —— pounds, three per centum consolidated Bank Annuities, and —— pounds three per centum reduced Bank Annuities, and of such other stocks and funds as aforesaid, unto the said [*grantor*], her appointees or assigns; and satisfaction shall thereupon, at the expense of the said [*grantor*], her heirs, appointees, executors, administrators, or assigns, be acknowledged upon the record of the judgment to be en-

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tered up by virtue of the aforesaid warrant of attorney. PROVIDED ALSO, *and it is hereby further agreed and declared* between and by the said [*grantor*] and the said [*grantee*], that the said warrant of attorney of even date herewith, and the judgment to be entered up by virtue thereof, are intended only as a collateral security for the payment of the said annuity or yearly rent-charge of —— pounds, at the times and in manner hereinbefore appointed *for payment thereof: *And accordingly it is hereby declared*, that no execution shall be sued out upon or by virtue of such judgment, unless and until the same annuity or yearly rent-charge, or some part thereof, shall be in arrear or unpaid for the space of forty days next after any of the times hereinbefore appointed for payment thereof: *And* that in case the same annuity or yearly rent-charge, or any part thereof, should be in arrear or unpaid for the space of forty days next after any of the times hereinbefore appointed for payment thereof, then and in every such case it shall be lawful for the said [*grantee*], his executors, administrators, or assigns, to sue out execution upon or by virtue of the same judgment: *And* out of the monies thereby to be levied and raised, to retain to, and reimburse, himself and themselves, respectively, all arrears which shall be for the time being due, of the said annuity or yearly rent-charge of —— pounds, and all costs, charges, and expenses, which the said [*grantee*], his executors, administrators, or assigns, and the trustees and trustee for the time being of these presents, shall sustain or incur, by reason or in consequence of the non-payment of the same annuity or yearly rent-charge, or in the suing out of such execution as aforesaid, or otherwise in relation thereto respectively: *And* that it shall not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive, or cause the said judgment to be revived, or to do any act, matter, or thing, to keep the same on foot, notwithstanding the said judgment should have been entered on record for the space of one year or upwards [nor shall it be necessary for him or them to sue out any writ or writs of *scire facias* to assess damages (*p*),]

Proviso, that warrant of attorney is intended only as a collateral security:

[*24]

No execution to be sued until annuity be in arrear for forty days.

On annuity being in arrear forty days, grantee to sue execution on judgment;

and thereby to pay arrears of annuity,

and all costs:

Agreement that judgment need not be revived.

[(*p*) The words within brackets are wholly unnecessary.]

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any rule or practice of the court in which the said judgment shall be entered up to the contrary notwithstanding: *And* that the said [*grantor*], her heirs, executors, or administrators, shall not nor will attempt by any ways or means, to take advantage of the said judgment not being revived; [nor of the want of issuing out any writ or writs of *scire facias* as aforesaid:] *And* that in case of any such attempt being made, these presents shall or may be pleaded in bar. AND THE SAID [*grantor*] doth hereby for herself, her heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that she the said [*grantor*] shall not nor will, at any time hereafter, during the continuance of this security, *leave England or go beyond seas, without giving to the said [*grantee*] his executors, administrators, or assigns, as early notice thereof as conveniently may be: AND FURTHER, that she the said [*grantor*] shall and will, from time to time, and at all times hereafter, during the continuance of the said annuity, whensoever thereunto requested by the said [*grantee*], his executors, administrators, or assigns, by letter or notice in writing, to be delivered to her, or left for her at her usual or last place of abode; *and also*, in the event of her the said [*grantor*] preparing to go beyond seas as aforesaid, then without being so requested as aforesaid, unless prevented by illness or other inevitable accident, personally and gratuitously appear and attend at such office or offices for life insurance within the cities of London or Westminster, or the liberties thereof, as she shall be so requested, for the purpose of enabling the said [*grantee*], his executors, administrators, or assigns, to insure the sum of [*purchase money*] pounds, or any part thereof, in one or more sum or sums, upon the life of her the said [*grantor*]; *And also* shall and will, whensoever thereunto requested as aforesaid, and particularly once at the least in every year, in the event of her going, and during the time she shall remain beyond seas as aforesaid, at her own costs and charges, procure, furnish, and deliver all such due and regular certificates of her being living, and of the state of her health, and also make answer to all questions relative to such insurance or insurances, which

Agreement by grantor not to leave England without giving grantee notice:

[*25]

to appear at insurance office:

during continuance abroad to send certificates of health:

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shall be necessary for the continuance or renewal thereof; *And* shall and will, from time to time, pay to the said [*grantee*], his executors, administrators, or assigns, all such additional sums of money, for or in respect of such insurance as aforesaid, as shall or may be incurred, or rendered necessary, by reason or in consequence of her the said [*grantor*] going beyond seas (*q*); *And* the said additional premiums of insurance (*r*) shall be recoverable by and under all and every the securities and remedies for securing the said annuity hereby granted, and in addition thereto, from time to time, as fully and effectually to all intents and purposes as if a part thereof originally; *And further*, that she the said [*grantor*] shall not nor will do any act or *thing, whereby, or by means whereof, any policy or policies for effecting such insurance as aforesaid shall or may be or become, or be liable to be or to become, impeached, void, or voidable. PROVIDED ALWAYS, *and it is hereby further agreed and declared* between and by the said parties hereto, that the said [*trustee*], his executors, administrators, or assigns, shall not, nor shall any or either of them, be answerable for any involuntary losses, happening in the execution of the trust herein expressed: *And* that the receipt or receipts in writing of him the said [*trustee*], his executors, administrators, or assigns, for any monies payable to him or them, by virtue of these presents, shall exonerate the person or persons paying the same from all responsibility with regard to the application thereof. AND THIS INDENTURE ALSO FURTHER WITNESSETH, that for the considerations aforesaid, the said [*trustee*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantor*], her heirs, appointees, and assigns, that the said [*trustee*], his executors, administrators, and assigns, shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the proper costs and charges in the law of the said [*grantor*], her heirs, ap-

and to pay grantee extra insurance for being abroad;

extra insurance to be recovered by same remedies as annuity;

grantor not to do any act whereby policy of insurance may become voidable.

[*26]

Indemnity clause to trustee:

trustee's receipts to be discharges.

Further testatum.

Covenant by trustee to produce settlement;

[(*q*) "with interest for the same at the rate of —— per centum per annum:"]

[(*r*) "and interest,"]

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pointees, or assigns, (unless hindered or prevented by fire or other inevitable accident(*s*),) produce and show forth, or cause to be produced and shown forth, unto the said [*grantor*], her heirs, appointees, and assigns, or to her, their, or any of their counsel, attornies, agents, or solicitors, or at any trial or hearing in any court of law or equity, or otherwise, as occasion shall be or require; and at the like request, costs, and charges, permit and suffer her, him, or them, to make and take copies of the said indenture of settlement hereinbefore recited; *And also* shall and will in the mean time keep and preserve the same indenture of settlement safe, undefaced, unobliterated, and uncancelled (damage by fire, or other inevitable accident, only excepted). IN WITNESS, &c.

permit copies to be made;

and keep the original safely.

In witness, &c.

(*s*) *Vide* Vol. 1, p. 2, (*a*).

GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

GRANT *of an* ANNUITY, *charged on* LEASEHOLD *Premises: Power of Distress by a Mortgagee who is paid off, and the Grantor of the Annuity;* ASSIGNMENT *by the Mortgagee and Grantor to two Trustees,* UPON TRUSTS, *after default in Payment of the Annuity, out of the Rents, or by demising, mortgaging, or selling the Premises, to raise Money for paying the Annuity: with special* COVENANTS *by the Grantor to enter into Covenants for Title with Purchasers and Mortgagees; to covenant to pay Mortgage Money and Interest; to give a Power of Sale to Mortgagees; to join in Sales to be made by Mortgagees; to pay the Rent and perform the Covenants in the Lease until Sale, or Default made in paying Mortgage Money; to indemnify the Trustees therefrom:* COVENANT *by the Grantor to* INSURE *the Premises* AGAINST FIRE *in the Grantee's Name; with Power for the Grantee to insure on his Default, and to recover the Sums paid, with Interest, by Distress:* DEFEASANCE *on the Judgment:* POWER *to repurchase at any time on giving Six Months' Notice: short Power to appoint new Trustees; Clause for their Indemnity, and to retain their Expenses.* [*Variation—where a Sum of Money is deposited in the hands of Trustees to pay off a subsisting Mortgage Debt* (*a*).]

Parties.

THIS INDENTURE, made the —— day of ——, 18—; BETWEEN [*grantor*], of, &c. of the first part,

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Consideration money for an annuity may be

[(*a*) There seems to be objection, under the 6th section of the Annuity Act, to paying over part of the consideration money for an

[*grantee*], of, &c. of the second part, [*mortgagee*], of, &c, of the third part, and [*two trustees*], of, &c. of the fourth part. WHEREAS by indenture, bearing date on or about the —— day of ——, 18—, and made between * [*lessor*] of the one part, and [*lessee*] of the other part; for the considerations therein mentioned, the said [*lessor*] did demise and lease unto the said [*lessee*], her executors, administrators, and assigns, *All those* three messuages or tenements adjoining to each other, with the vacant pieces of ground or yard, and skittle ground behind the same, situate, lying, and being on the south side of —— Lane, in the borough of ——, in the county of ——, one of which was then lately used as a public house, and was called or known by the name or sign of the ——; all which said three messuages or tenements and premises abut towards the north on —— Lane aforesaid, towards the south on —— Alley, towards the east in part on the passage leading from —— Lane into —— Alley, and in other part on the messuage or tenement thereinafter demised; towards the west, on a messuage or tenement then or then late in the tenure or occupation of ——: *And also all those* two other messuages or tenements adjoining on the north-east to the above mentioned three messuages or tenements; which said two messuages or tenements abut in front on the vacant piece of ground above mentioned, and on the south west on the skittle ground: *And also all that* messuage, tenement, and premises, situate, standing, and being on the north side of —— Alley afore-

GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

Recital of a lease for years.

[*28]

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annuity to third persons, for a particular purpose, if the purpose for which the payment is made be for the exclusive benefit of the grantor, (*vide ante*, Vol. 1, p. 335, *g*). This is sometimes convenient where, as in the present case, part of the purchase money is intended to be applied in liquidation of an existing mortgage, but which cannot be done simultaneously with the grant of the annuity on account of the refusal of the mortgagee to take his money without notice. The precedent in the text may be easily adapted to such a case, by making the trustees parties instead of the mortgagee, and adding the variations suggested in the present Editor's notes, referred to by the letters (*aa*). It seems to be proper that one at least of the trustees of the money should be nominated by the grantor.]

paid to third persons for the use of the grantor.

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said, and adjoining to the said vacant piece of ground and yard thereby demised: All which six messuages or tenements, vacant piece of ground or yard, skittle ground, and premises, were then late in the tenure or occupation of [ ] his assigns or undertenants, but were then in the tenure or occupation of the said [*lessee*]. *To hold* the said messuages or tenements and premises, with the appurtenances, unto the said [*lessee*], her executors, administrators, and assigns, from the feast of the nativity of Saint John the Baptist, then last past, for the term of —— years thence next ensuing, at the clear yearly rent of —— pounds —— shillings. AND WHEREAS by an indenture indorsed upon the said recited lease, bearing date on or about the —— day of ——, 18—, and made between the said [*lessee*], of the one part, and the said [*grantor*] of the other part; for the consideration therein mentioned, the said [*lessee*] did * assign and set over unto the said [*grantor*], his executors, administrators, and assigns, *The* said messuages or tenements and premises above mentioned and described; together with all erections, buildings, and improvements then erected and built on the said pieces of ground or any of them: *To hold* the same unto the said [*grantor*], his executors, administrators and assigns, for the residue of the said term of —— years; *subject* nevertheless to the payment of the said yearly rent of —— pounds —— shillings, and to the performance of the covenants and agreements contained in the said recited lease, on the part of the lessee or assignees of the said premises. AND WHEREAS by indenture bearing date on or about the —— day of —— 18—, and made between the said [*grantor*], of the one part, and the said [*mortgagee*], of the other part; for the considerations therein mentioned, the said [*grantor*] did assign and set over unto the said [*mortgagee*], *All* the messuages or tenements, pieces or parcels of ground and premises above mentioned and described, with all erections, buildings, and improvements then erected and made on the said pieces of ground or any of them: *To hold* the same unto the said [*mortgagee*], his executors, administrators, and assigns, for all the then residue and remainder of the said term of —— years: *but subject* nevertheless to a proviso for redemption of

Recital of assignment.

[*29]

Recital of mortgage.

GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

the said premises on payment by the said [*grantor*] to the said [*mortgagee*] of the sum of [*mortgage money*] with lawful interest for the same, on the —— day of —— then next ensuing. AND WHEREAS the said [*grantee*], hath contracted and agreed with the said [*grantor*] for the purchase of an annuity or yearly sum of —— pounds, payable during the lives of [*two nominees*], of, &c. and during the life of the longest liver of them, at or for the price or sum of —— hundred pounds, which said annuity it was agreed should be secured by a judgment to be entered up against the said [*grantor*], and also upon the messuages or tenements and premises above mentioned and described. AND WHEREAS there is now due and owing to the said [*mortgagee*] for principal money and interest upon his said recited security, the sum of [*mortgage money and interest*] which it hath * been agreed between the said [*grantor*] and [*grantee*] shall be paid off and discharged (*aa*) by the said [*grantor*]. AND WHEREAS the said [*grantor*] hath executed a warrant of attorney, bearing even date with these presents, thereby authorizing certain attornies therein named to confess a judgment against him in his Majesty's Court of King's Bench, at Westminster, in an action of debt at the suit of the said [*grantee*], his executors or administrators, for the sum of —— pounds, with costs of suit. NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement, and for and in consideration of the sum of ——

Recital of contract for annuity.

Recital of amount of mortgage money and interest.

[*30]

Recital of warrant of attorney to confess judgment.

Testatum.

[(*aa*) Out of the said purchase money or sum of —— pounds; but inasmuch as a notice which has been given to the said [*mortgagee*] by the said [*grantor*], of his intention to pay off the said mortgage debt is not yet expired, and the said [*mortgagee*] has declined to receive the same until the expiration of the said notice,† it has been agreed by and between the said [*grantor*] and [*grantee*], that the sum of —— pounds, part of the said sum of —— pounds, the purchase or consideration money of the said annuity, shall be paid to the said [*trustees of the mortgage money*] upon the trusts hereinafter expressed.]

Variation where part of the consideration money is to be applied to pay off a mortgage.

† As to notice to mortgagees, *vide post*, Vol. 5. p. 445.

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pounds of lawful money of Great Britain and Ireland, by the said [*grantee*] paid to the said [*grantor*], at the time of the sealing and delivery of these presents, (*aa*) the receipt whereof the said [*grantor*] doth hereby acknowledge, and of and from the same and every part thereof doth acquit, release, and discharge the said [*grantee*], his executors, administrators, and assigns, and every of them for ever, by these presents, *he* the said [*grantor*] *hath* granted and confirmed, and by these presents *doth* grant and confirm unto the said [*grantee*], his (*b*) executors, administrators, and assigns, for and during the natural lives of the said [*two nominees*], and the life of the longest liver of them, *An* annuity or yearly sum of —— pounds of lawful money of Great Britain and Ireland, to be issuing and payable out of the messuages or tenements and premises hereinbefore mentioned and described; and to be paid and payable unto the said [*grantee*], his executors, administrators, and assigns, in the Common Dining Hall of Lincoln's Inn, in the county of Middlesex, by four equal quarterly payments in the year, that is to say, on the ——, [*31] day of ——, the —— day of ——,* the —— day of ——, and the —— day of ——, in every year, by even and equal portions, the first payment thereof to begin and be made on the —— day of —— next ensuing the date hereof [if the said [*nominees*] or either of them shall be then living]: together with a proportional part of the same annuity or yearly sum of —— pounds, for the time which shall elapse between the day of payment which shall next immediately

Grant of annuity charged on leaseholds for the lives of two nominees and the life of the survivor.

[(*aa*) And also in consideration of the sum of —— pounds of like lawful money at the same time paid by the said [*grantee*] to the said [*trustees of the money*], at the request and by the direction of the said [*grantor*], testified by his executing these presents, the receipt and payment of which two several sums of —— pounds and —— pounds, making the said sum of —— pounds, the said [*grantor*] and also the said [*trustees*] do hereby respectively acknowledge, &c.]

(*b*) As this annuity is charged on a *leasehold* estate, there does not appear to be any objection to the grant of it to executors and administrators *pour autre vie*. *Vide* Vol. 1, p. 628.

Annuity charged on leasehold may be limited to executors, &c. *pour autre vie*.

GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

precede the day of the death of the longest liver of them the said [*two nominees*], up to and inclusive of the day of his or her decease; such proportional part to be paid immediately after the decease of such longest liver; and the said annuity or yearly sum of —— pounds to be paid and payable without any deduction or abatement thereout for or on any account whatsoever(*c*). AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said [*grantee*] his executors, administrators, and assigns, for and during the natural lives of the said [*nominee*] and [*other nominee*], and during the life of the longest liver of them, the said annuity or yearly sum of —— pounds, on the *days and at the place hereinbefore mentioned and appointed for payment thereof, and without making thereout any deduction or abatement whatsoever. AND for the more effectually securing the payment of the said annuity, the said [*grantor*], and also the said [*mortgagee*], at the request of the said [*grantor*], do, and each of them doth (according to their respective estates and interests in the said premises, and so far as they can or may), hereby

Covenant to pay annuity for the lives of two nominees, and the life of the survivor of them.

[*32]

Power of distress on leasehold lands by grantor of annuity and mortgagee of the premises who has the legal estate.

(*c*) The above deed was drawn by an eminent conveyancer who died a few years since. It is observable, that there is no habendum of the annuity, although it is usual in most modern grants of annuities or rent-charges to insert an habendum; *ut ante*, Vol. 1, pp. 633, 646; and 2 Sand. Uses, 104, 2d ed.; 376, 1st ed.; but it is a formal, and not a necessary part of the deed. See the form of such a grant without an habendum, West's Symboleography, Part 1, sect. 320, ed. 1605. 2 Horsman's Conveyancing, 14, ed. 1744. When an habendum was used in ancient deeds, the term for which the annuity was granted was not mentioned in the premises of the grant. *Vide* West's Symb. Part 1, sect. 298, &c. and "A Grant of an Annuity, penned by Mr. Edmund Plowden," Conveyancer's Light, or Compleat Clerk, page 1, and the other succeeding Forms; 1 Sir Orlando Bridgman's Conveyances, 77, 244, &c. 5th ed.; 1 Modern Conveyancer, 4, &c. 3d ed.: 2 Scrivener's Guide, 537, &c. 5th ed.; 1 Jacob's Accomplished Conveyancer, 264, &c.; Piggot's Conveyancing, 276, 278. The usual modern form appears first in 2 Horsman's Conveyancing, 10.

An habendum is unnecessary in the grant of an annuity.

GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

give and grant to the said [*grantee*], his executors, administrators, and assigns, full power and authority, when and as often as the said annuity or yearly sum of —— pounds, or any part thereof, shall be behind and unpaid for the space of fourteen days next after any of the said days appointed for payment thereof, to enter into and upon the said messuages or tenements and premises, or into or upon any of them, or into or upon any part of them, or any of them, or into or upon the appurtenances belonging to them, or any of them, and there to take and distrain any goods, chattels, and effects, which may be found thereupon; and in making any such distress or distresses, to act therein in all respects as landlords are entitled to do in making distresses for rent in arrear; to the intent that by such distress or distresses, or otherwise, all arrears of the said annuity, and all costs, charges, damages, and expenses, which the said [*grantee*], his executors, administrators, or assigns may sustain or be put unto, by reason of the nonpayment of the said annuity, or any part thereof, on the days appointed for payment of the same; and also all expenses attending the making of any such distresses, may be fully paid and satisfied. AND THIS INDENTURE FURTHER WITNESSETH(*aa*), that for the considerations aforesaid, and for better securing the due payment of the said annuity or yearly sum of —— pounds, and for and in consideration of [*mortgage money and interest*], of lawful money of Great Britain and Ireland, by the said [*grantor*] to the said [*mortgagee*] in hand paid, the receipt whereof he doth hereby acknowledge: and of and from the same and every part thereof doth hereby acquit, release, and discharge the said [*grantor*], his executors, administrators, and assigns, and doth admit that the same is in full satisfaction of all principal money and *interest due and owing to him upon the said recited mortgage: *And also* for and in consideration of the sum of ten shillings a-piece of like lawful money to each of them the said [*grantor*] and [*mortgagee*], in hand paid by the

Further testatum.

[*33] Assignment by mortgagee and grantor of annuity of leasehold.

[(*aa*) If the mortgage is to be paid off in the manner before suggested, *ante*, this part of the precedent will of course be varied. The grantor for the consideration before expressed, with the addition of a nominal consideration, will simply assign.]

said [*trustees*], at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; *He* the said [*mortgagee*], at the request of the said [*grantor*], and on the nomination of the said [*grantee*], testified by their being parties to and executing these presents, *hath* (*d*) bargained, sold, assigned, transferred, and set over, *and* by these presents *doth* bargain, sell, assign, transfer, and set over; *And* the said [*grantor*] *hath* granted, bargained, sold, assigned, transferred, and set over, ratified and confirmed, *and* by these presents *doth* grant, bargain, sell, assign, transfer, and set over, ratify, and confirm, unto the said [*trustees*], their executors, administrators, and assigns, ALL and singular the messuages or tenements and premises above mentioned and described; AND ALSO all the estate, right, title, interest, term of years yet to come and unexpired, property, claim, and demand whatsoever, both at law and in equity, of them the said [*mortgagee*], and [*grantor*], and each of them, of, in, and to the same, and every part thereof. TO HAVE AND TO HOLD the same messuages or tenements and premises, with their and every of their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns henceforth, for and during all the residue and remainder now to come and unexpired of the said term of —— years: *But subject* nevertheless to the payment henceforth of the said yearly rent of —— pounds —— shillings, reserved by the said recited lease: and to the performance of the covenants and agreements therein contained on the part of the lessee or assignee of the said premises: AND *upon the Trusts* hereinafter declared concerning the same; that is to say, UPON TRUST to permit and suffer the said [*grantor*], his executors, administrators, and assigns (he and they paying the said yearly rent of —— pounds —— shillings, and performing the said covenants and agreements), to *receive and take the rents and profits of the said premises for his and their own use, until default shall be made in payment of the said annuity or yearly sum of —— pounds, on the days

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Parcels.

All the estate.

Habendum for residue of term;

subject to the rent and covenants.

Upon trust to permit grantor to enjoy premises until default, he paying the rent and performing the covenants.

[*34]

(*d*) See the reason why the word *grant* is omitted in this instance, Vol. 1, p. 424.

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hereinbefore appointed for payment thereof. And in case the said annuity or yearly sum of —— pounds, or any part thereof, should be unpaid for the space of twenty-one days next after any of the said days of payment (being lawfully demanded at any time after the same shall become due) then, and so often as the same shall happen, Upon trust, that they the said [*trustees*], or the survivor of them, his executors, administrators, or assigns (*e*), shall, out of the rents and profits of the said messuages or tenements, and premises, or by demising, mortgaging, or selling the same, or any part thereof, for all or any part of the then residue of the said term of —— years, or by such other ways and means as to the said [*trustees*], or the survivor of them, his executors, administrators, or assigns, shall seem meet, raise and levy such sum and sums of money as will be sufficient to pay and satisfy the said annuity, or so much thereof as shall be in arrear and unpaid; and also all such sums of money, costs, damages, and expenses, (if any,) as he the said [*grantee*], his executors, administrators, or assigns, shall sustain or be put unto by reason of the nonpayment of the said annuity, or any part thereof, on the days or times appointed for payment thereof; and also all such costs, charges, and expenses as they the said [*trustees*], their executors, or administrators, or any of them, may expend or be put unto in and about the execution of the trusts hereby in them reposed; and shall and do pay and apply the monies so to be raised accordingly: And after full payment of the said annuity, and all such costs, charges, and expenses as aforesaid, to permit and suffer the said [*grantor*], his executors, administrators, and assigns, from time to time to receive and take the surplus of the rents and profits of the said premises: and also to pay to him or them the surplus (if any) of the monies so to be levied and raised as aforesaid, for his and their own benefit (*f*). Provided always, *and it is hereby agreed*

On default in payment,

upon trust out of rents, or by demising, mortgaging, or selling premises to raise money to pay annuity;

and all costs of grantee.

and of trustees.

and subject thereto, to permit grantor to receive surplus rents;

and to pay him surplus of monies raised.

After decease

(*e*) [*Vide* an observation, *post*, Vol. 5, p. 552.]

(*f*) [A trust for sale to secure an annuity ought in general to be accompanied by a trust for investment of the purchase money; *ut ante*, Vol. 1, p. 552, 555, (*a*); for if the produce of the sale is to be paid over to

As to trusts for the investment of purchase monies.

between the said parties hereto, that after the decease of the longest liver of them the said [*two nominees*], and full payment of the said annuity, and of all arrears thereof, *and of such proportional part thereof as aforesaid, and of all such costs, charges, and expenses as aforesad, then and in such case the said [*trustees*], their executors, administrators, or assigns, shall and will, at the costs and charges of the said [*grantor*], his executors, administrators, or assigns, re-assign the said messuages or tenements and premises, or such of them as shall not have been sold or mortgaged for the purposes aforesaid, unto the said [*grantor*], his executors, administrators, or assigns, for his or their own use and benefit, free from all incumbrances to be made or suffered by them the said [*trustees*], or their respective executors, administrators, or assigns. AND for the purpose of facilitating any such sale or mortgage as aforesaid, *it is hereby declared and agreed* by and between the parties hereto, that all contracts, sales, mortgages, assignments, and things, which shall be entered into, made, and executed by the said [*trustees*] or the survivor of them, his executors, or administrators, of or concerning the said messuages or tenements and premises, or any part or parts thereof, shall, to all intents, constructions, and purposes whatsoever, be as valid and effectual in the law, although the said [*grantor*], his executors, administrators, or assigns should not join therein, execute the same, or assent thereto, as the same would have been in case the said [*grantor*], his executors, administrators or assigns, had actually joined therein and executed the same (*g*).

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of survivor of nominees, and payment of annuity, &c. trustees to re-assign.

Sales and mortgages to be valid without grantor's concurrence.

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the grantor after discharging the arrears, it would be necessary for the annuitant, in order to avoid diminishing the security, from time to time to sell only so much of the property as would produce sufficient to discharge the arrears; a course which would obviously be attended with much disadvantage and inconvenience. The propriety of clothing the annuitant with a power of sale and investment depends of course upon circumstances. Where there is no prior incumbrance, and the property yields an immediate income sufficient to satisfy the annuity, there is obviously less reason for requiring it, than where the contrary is the case.]

(*g*) Under trusts for sale, with similar provisions to those contained in the above deed, the trustees alone can convey a good title to the purchaser, without the concurrence of the owner. *Vide* Vol. 1, p. 569.

Trustees for sale can convey a good title.

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Receipts of trustees to be good discharges to purchasers, mortgagees, and persons paying rents.

AND *it is hereby further declared and agreed*, that the receipts of the said [*trustees*], or the survivor of them, or the executors or administrators of such survivor, shall be good and sufficient discharges to the purchaser or purchasers, mortgagee or mortgagees of the said premises, or of any part or parcel thereof, for the purchase or mortgage money thereof, and to the person or persons paying the rents thereof; or for so much of such purchase or mortgage money or rents, as in such receipts shall be acknowledged to be received: *And* that such purchaser or pur-

[*36] *chasers, mortgagee or mortgagees, or person or persons paying such rents as aforesaid, his, her, or their executors, administrators or assigns, shall not afterwards be answerable or accountable for any loss, or misapplication, or non-application of such purchase or mortgage money, or rents, for which receipts shall be so taken as aforesaid: *And it is also declared*, that it shall not be incumbent upon any such purchaser or mortgagee, or person paying any of the said rents, to see or to inquire into the necessity or expediency of any such sale or mortgage, or of the receipt by the said [*trustees*], or the survivor of them, his executors or administrators, of the said rents, or any part thereof (*h*).

Covenants with the trustees by the grantor, restricted to his own acts, that the lease is subsisting and valid;

AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*trustees*], their executors, administrators, and assigns, that, for and notwithstanding any act, deed, or thing whatsoever by him the said [*grantor*], at any time heretofore made, done, or committed, or willingly suffered to the contrary, the said recited indenture of lease is a good and subsisting lease, valid in the law, and not assigned, surrendered, forfeited, or otherwise determined or become void or voidable:

that grantor and mortgagee have good right to assign, upon the trusts aforesaid;

AND that, for and notwithstanding any such act, matter, or thing as aforesaid, they the said [*grantor*] and [*mortgagee*] now have in themselves, or one of them hath in himself, good right, full power, and lawful and absolute authority, by these presents, to assign and

(*h*) The covenant from the mortgagee, that he has not encumbered, is inserted at the end of this deed: it is usually placed before the covenants for title; but it is of no importance where it is placed, excepting so far as regards technical uniformity.

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assure the said messuages or tenements and premises, with the appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, upon the trusts nevertheless, and in manner aforesaid, according to the true intent and meaning of these presents: AND FURTHER, that after any such sale shall be made as aforesaid, or in case the said premises, or any part thereof, should be mortgaged, then, after default shall be made in payment of the mortgage money and interest, or any part thereof respectively, the said messuages or tenements and premises, and such of them as shall be so sold or mort-*gaged, shall, and lawfully may, from time to time, and at all times thereafter during the residue of the said term of —— years therein, be peaceably and quietly held and enjoyed, and the rents, issues, and profits thereof be received and taken, by the purchaser or purchasers, mortgagee or mortgagees thereof, his, her, or their executors, administrators, and assigns, for his, her, and their own use and benefit, without the lawful molestation, interruption, or disturbance of him the said [*grantor*], his executors, administrators, or assigns, or any person or persons lawfully claiming any estate, right, interest, either at law or in equity, in, to, or out of the same, or any part or parcel thereof, by, from, under, or in trust for him, them, or any of them: AND [that (*i*)] free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by him the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, and kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, assignments, mortgages, rents and arrears of rent, titles, charges, and incumbrances whatsoever, made, done, or committed, or knowingly or willingly suffered by him the said [*grantor*], or by any person or persons lawfully claiming by, from, under, or in trust for him, or by, through, or with his act, means, consent, default, privity, or procurement; *subject* only to the payment thenceforth of the yearly rent reserved by the said recited indenture

[*37]

for peaceable enjoyment after sale, or default in payment of mortgage money;

free from incumbrances;

but subject to the rents and covenants of the lease, or of a proportional part thereof;

(*i*) *Vide ante*, p. 20, (*l*).

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of lease, or of a proportional part thereof; and to the observance and performance in respect of the premises so sold or mortgaged, of the covenants and agreements therein contained on the part of the lessee or assignee of the said premises: And moreover, that he the said [*grantor*], his executors and administrators, and all other persons whosoever, having, or lawfully or equitably claiming any estate, right, title, trust, or interest, in, to, or out of the same premises, or any part thereof, by, from, under, or in trust for him, them, or any of them, shall and will from time to time, and at all times, after any such sale or mortgage shall be made, at the rea-

for further assurance.

[*38] *sonable request, and at the costs and charges in the law of the purchaser or purchasers, mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, make and execute, or cause and procure to be made and executed, all further lawful and reasonable acts, assignments, and assurances in the law whatsoever, for more perfectly and absolutely assigning the said premises, or such of them as shall be so sold or mortgaged, with their appurtenances, unto such purchaser or purchasers, mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, for all the residue which shall be then to come and unexpired of the said term of —— years: *As* by such purchaser or purchasers, mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, or by their or any of their counsel, learned in the law, shall be reasonably devised or advised and required: And further, that upon making any such sale or mortgage as aforesaid, he the said [*grantor*], his executors, administrators, or assigns, shall and will (if required) join and concur in the making thereof, and in executing the several assignments and assurances of the said premises to the purchaser or purchasers, mortgagee or mortgagees thereof, or of such part or parts thereof as shall be so sold or mortgaged; and enter into all usual and reasonable covenants with such purchaser or purchasers, mortgagee or mortgagees, his, her, or their executors, administrators and assigns, for the estate, title, possession, and further assurance of the same premises, or of such of them as shall be so sold or mortgaged: and enter into the

Covenant by grantor to join in making sales and mortgages,

and enter into usual covenants with purchasers and mortgagees;

and to covenant

usual and proper covenant with such mortgagee or mortgagees for the due payment of the mortgage money, and interest; *And* in case any mortgagee or mortgagees should request the same, shall and will empower such mortgagee or mortgagees to sell the premises mortgaged, in case default should be made in the due payment of the mortgage money and interest thereby secured, or any part thereof; and in every mortgage security in which such power of sale shall be given he the said [*grantor*], his executors or administrators, shall and will enter into covenants with such mortgagee or mortgagees, to join and concur (if requested) in any such sale or sales; *nevertheless* it shall be declared *in any such mortgage security, that the joining or concurring of the said [*grantor*], his executors or administrators, shall not be essential to the validity of any such sale, but only for the purchaser's satisfaction: AND MOREOVER, that he the said [*grantor*], his heirs, executors, or administrators, from time to time, and at all times hereafter, until any such sale shall be made as aforesaid: or in case the said premises, or any part thereof, should be mortgaged, then until the mortgagee or mortgagees may enter thereon for default of payment of the said mortgage money and interest, or any part thereof, shall and will well and truly pay, or cause to be paid, the yearly rent reserved by the said recited lease; *and* observe, perform, and keep all and singular the covenants and agreements therein contained on the part of the lessee of the said premises: AND (*k*) shall and will, from time to time, and at all times hereafter, keep harmless and indemnified the said [*trustees*], their heirs, executors, and administrators, and every of them, their, and every of their lands and tenements, goods and chattels, of, from, and against the payment of the said

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to pay mortgage money and interest;

mortgagees to have power of sale;

grantor to covenant to join in sales to be made by mortgagees; but his consent not to be essential.

[*39]

Covenant by grantor to pay rent and perform covenants in leases until premises are sold, or default made in paying mortgage money:

and to indemnify trustees from rent and covenants.

(*k*) If the grantor and grantee are both to join in the covenant to indemnify the trustees, the covenant may immediately precede the defeazance on the judgment, *post*, p. 41, and the lien part to be *ut post*, p. 65†:

" with the said [*trustees*], their heirs, executors, and administrators, &c. indemnified the said [*trustees*], their heirs, executors, and administrators, and every of them, their, and every of their lands. &c." *ut supra, vel post*, 65.

Covenant by grantor and grantee to indemnify trustees against rents and covenants in lease.

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rent, and the performance of the said covenants and agreements, and also of, from, and against all and all manner of actions, suits, claims, and demands whatsoever, for or on account of the said rent, or any part thereof, or for or on account of the breach or non-performance of any of the said covenants and agreements. AND FURTHER, that he the said [*grantor*], his heirs, executors, or administrators, shall and will, from time to time, and at all times hereafter, so long as the said annuity or yearly sum of —— pounds shall remain payable, insure and keep insured in the name or names of the said [*grantee*], his executors, administrators, or assigns, in some good public fire insurance office in London or Westminster, the said messuages or tenements and premises, or such of them as shall *not be sold by virtue of the trusts aforesaid, in the full sum of ——hundred pounds; and forthwith deliver the policy or policies of every such insurance unto the said [*grantee*], his executors, administrators, or assigns (*l*). PROVIDED ALWAYS, *and it is hereby agreed*, that if the said [*grantor*], his executors, or administrators, should at any time, whilst the said annuity or yearly sum of —— pounds shall be payable, and the said messuages and buildings shall remain unsold as aforesaid, refuse or neglect to insure the said sum of ——hundred pounds in the name or names of the said [*grantee*], his executors, administrators, or assigns, or to deliver the policy or policies of every such insurance unto him or them as aforesaid, then and so often as the same shall happen, it shall and may be lawful for the said [*grantee*], his executors, administrators, or assigns, in like manner to insure the same in the said sum of —— hundred pounds, or any less sum, and for such length of time as he or they shall think proper: AND *it is hereby declared*, that all sums of money which shall be recoverable on any such policy of insurance, shall forthwith be laid out and expended in rebuilding or repairing the premises insured, or such of them as may be destroyed or injured by fire, in order the better to secure the due payment of the said annuity: AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby further covenant and agree with the

Covenant by grantor to insure premises in grantee's name, so long as annuity remains payable;

[*40]

if grantor neglect to insure, or to deliver policy of insurance, grantee to insure.

Money recovered under policy of insurance to be expended in rebuilding premises.

Covenant by grantor to repay grantee premiums and costs of insurance, &c.

(*l*) *Vide ante*, Vol. 1, p. 649.

said [*grantee*], his executors, administrators, and assigns that he the said [*grantor*], his heirs, executors, and administrators, shall and will, upon demand in writing left at his or their place or places of abode, pay and satisfy unto the said [*grantee*], his executors, administrators, or assigns, the premiums, costs, and charges which he the said [*grantee*], his executors, administrators, or assigns, or any of them, shall expend or be put unto in the making of any such insurance as aforesaid, or which they or any of them shall expend or be put unto, in or about the receiving or recovering the money thereby recoverable (*m*). AND *it is hereby declared and agreed*, that in case the said [*grantor*], his heirs, executors, or administrators, should make default in payment of such last mentioned premiums, costs, charges, and expenses (*n*), for the space of fourteen days next *after any such demand shall be made as aforesaid, then and in such case, the same shall be levied and raised by distress, in the same manner as is hereinbefore mentioned with respect to the arrears of the said annuity, any thing herein contained to the contrary thereof notwithstanding (*o*). PROVIDED ALWAYS, *and it is hereby declared and agreed* by and between the said [*grantee*] and [*grantor*], that the judgment to be entered up upon the said recited warrant of attorney shall be considered as a security only for the better securing the payment of the said annuity or yearly sum of —— pounds, on the days or times appointed for the payment thereof: AND that no execution shall be taken out upon the said judgment unless some payment of the said annuity, or some part thereof, should be in arrear for twenty-one days next after some or one of the days or times hereby appointed for

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And on default in payment, grantee to distrain for the amount.

[*41]

Judgment to be entered on warrant of attorney, to be considered as a further security only.

No execution to be sued until annuity be in arrear for twenty-one days.

[(*m*) "With interest on all such premiums, costs, and charges, at the rate of five pounds per centum per annum, from the time or respective times of the expenditure thereof."]

With interest.

[(*n*) "With interest as aforesaid."]

[(*o*) "PROVIDED, nevertheless, that the total amount of the principal monies to be ultimately recoverable by virtue of the power lastly hereinbefore contained shall not exceed the sum of —— pounds."]

Limitation of amount of insurance monies to be recoverable.

[As to the utility of this addition, *vide post*, Vol. 1, p. 650.]

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payment thereof: AND *it is also declared and agreed* by and between the said [*grantor*] and [*grantee*], that when and as often as the said annuity or yearly sum of —— pounds, or any part thereof, shall be behind and unpaid by the space of twenty-one days next after any of the days or times appointed for payment thereof, then and in every such case, it shall be lawful for the said [*grantee*], his executors, administrators, and assigns, to sue out such execution or executions upon the said judgment, as he or they shall think fit or be advised, for the recovery of the arrears of the said annuity, and all costs and charges which he the said [*grantee*], his executors, administrators, or assigns, or any of them, shall sustain or be put unto by reason or in consequence of the non-payment thereof: AND *it is also agreed*, that it shall not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive, or cause to be revived the said judgment, or to do any act, matter, or thing to keep the same on foot, notwithstanding the same shall have been entered on record for the space of one year or upwards, and notwithstanding any rule or practice of the Court in which the said judgment shall be entered on record to the contrary: AND that he the said [*grantor*], his *heirs, executors, or administrators, shall not nor will take, or attempt to take, any advantage from want of reviving or keeping the said judgment on foot: PROVIDED ALWAYS, *and it is hereby further agreed and declared*, that from and after the decease of the survivor of them the said [*nominees*], and full payment of the said annuity, and such proportional part thereof as aforesaid, and all such costs, charges, damages, and expenses in anywise relating to the said judgment, he the said [*grantee*], his executors, administrators, or assigns, shall and will, at the request, costs, and charges, of the said [*grantor*], his heirs, executors, or administrators, acknowledge satisfaction of the said judgment upon the record thereof: PROVIDED ALWAYS, *and it is hereby further declared and agreed*, that in case the said [*grantor*], his heirs, executors, or administrators, should at any time hereafter be minded and desirous of repurchasing the said annuity or yearly sum of —— pounds, and of such his or their intention should give

When annuity is in arrear twenty-one days, grantee to sue execution on judgment.

Not to be necessary for grantee to revive judgment.

Grantor not to take advantage of not reviving judgment.

[*42]

After death of nominees, and full payment of annuity, &c. grantee to acknowledge satisfaction on judgment.

Power to repurchase annuity at any time on giving six months' notice.

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unto the said [*grantee*], his executors, administrators, or assigns, six calendar months' notice in writing, then and in such case, he the said [*grantee*], his executors, administrators, or assigns, shall and will at the expiration of the said period of six calendar months, on receiving all sums of money which shall be due for arrears of the said annuity, with a proportional part thereof from the last day of payment next preceding such repurchase, up to and inclusive of the day of repurchasing the same (*p*), accept and take the said sum of —— hundred pounds, as and in full for the repurchase of the said annuity or yearly sum of —— pounds: And on receipt of the said sum of —— hundred pounds, and all arrears of the said annuity, and of such proportional part thereof as aforesaid, and all costs, charges, and expenses as aforesaid, shall and will, at the costs and charges in the law of him the said [*grantor*] his heirs, executors, or administrators, [deliver up these presents to be cancelled, and] acknowledge, or cause satisfaction to be acknowledged, on the record of the judgment which shall be entered upon the said warrant of attorney (*q*); and then and in such case the said annuity *or yearly sum of —— pounds, and all powers and authorities herein contained for enforcing the payment thereof, †shall cease, determine, and be void, any thing herein contained to the contrary thereof in any wise notwithstanding.

Grantee to acknowledge satisfaction on judgment or repurchase of annuity:

and then annuity and all powers, &c. cease.

[*43]
[†44]

[(*p*) "and also such premiums, costs, and charges of insurance, and interest thereon as aforesaid."]

(*q*) Omit the words within crotchets, which are not applicable to this instrument, and instead of them, say in this place,

"and they the said [*trustees*], their executors, administrators, or assigns, shall and will, at the costs and charges in the law of the said [*grantee*], his executors or administrators, assign the said messuages or tenements and premises, or such part of them as shall not have been sold or mortgaged under the trusts hereinbefore declared, unto the said [*grantor*], his executors, administrators, or assigns, or as he or they shall direct or appoint for the residue then to come of the said term of —— years therein, free from all incumbrances to be made or suffered by them the said [*trustees*], or either of them, their, or either of

Trustees to reassign premises on repurchase of annuity.

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Power to appoint new trustees.

AND *it is hereby declared*, that in case the said [*trustees*], or either of them, or any trustee or trustees to be appointed by virtue of this provision, should die, or decline to act in the trusts hereby created, then a new trustee or trustees may be appointed by the trustee or trustees so

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their executors, administrators, or assigns;† and, &c." *ut supra.*

An estate cannot be devested by cancelling the deed creating it.

For an estate or interest once absolutely vested cannot be devested by merely cancelling the deed creating it; *Leech* v. *Leech*, 2 Chan. Rep. 100; whether the conveyance took effect by livery of seisin, or by lease and release; Gilb. Evidence, 95, 6th ed.; 107, 4th ed.; or whether the estate lie in livery, or in grant; *Bolton* v. The Bishop of *Carlisle*, 2 Hen. Blackst. 263, 264; or be a settlement of money; *Hudson*'s case, cited Prec. Chan. 235: nor can a lease for years be surrendered by cancelling the indenture; *Magennis* v. *Maccullock*, Gilb. Eq. Cas. 235. *Roe* dem. Earl of *Berkeley* v. Archbishop of *York*, 6 East, 100: [and *vide post*, Vol. 4, p. 416:] nor consequently can a lease for years assigned be revested in the assignor by cancelling the assignment. For these purposes the freehold estate should be conveyed, the benefit of the settlement should be released, the lease for years should be surrendered, and the leasehold estate should be assigned.

A bond or deed of covenants may become void by intentional cancellation by the person beneficially entitled.

Although a bond, *Peeres* v. *Bishop*, Dyer, 112 a, or the covenants, &c. in a deed, may become void by an intentional cancellation of the instrument by the person entitled to the benefit of it, yet it is always advisable for him to give a release, or to sign an indorsement on the bond or deed, either acknowledging satisfaction, or that the bond or deed was cancelled by him for the purpose of making the same void.

A term for years may cease, under a proviso made at the time of its creation; but an estate of freehold cannot under a common law conveyance.

The above observations as to cancellation, must be distinguished from the case of a *term of years, created* with a proviso that when the purposes for which it was granted are satisfied, the term shall cease; for in the latter case, on the happening of the event appointed for its determination, the term ceases, and the right of the immediate reversioner to the possession is accelerated. But an estate of *freehold*, under a *common law* conveyance, cannot cease by virtue of a proviso made at the time of its creation. Co. Litt. 214 *b*.

[As to the determination of leases by cancelling the indenture, see 4 Gwil. Bac. Abr. 210, 218; Roberts on Frauds, 251; 1 Wms. Saund. 236 *a*.]

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† As the trustees only become liable to the rent and covenants as assignees, *post*, 52, and as the grantor, *ante*, 39, covenants to indemnify them therefrom, it need not be mentioned here that the re-assignment shall contain such a provision.

declining to act, or by the executors or administrators of the trustee so dying; and in every such case the said messuages or tenements and premises, or such of them as may not be sold by virtue of these presents, shall be assigned and conveyed, so as to be vested in such new and such surviving or continuing trustees, or in such new trustees only, as the case may happen, upon the same trusts and with the same powers as are hereinbefore mentioned and declared concerning the same. AND *it is further declared*, that the said [*trustees*], and the trustees or trustee for the time being of the said trust premises, shall not be answerable one for another, and by no means for any involuntary loss; and that they shall be allowed, and may retain to, and reimburse themselves, out of the money to arise from any such sale or mortgage to be made by virtue of these presents, all their costs, charges, damages, and expenses, occasioned by the due execution of the trusts hereby in them reposed. AND THE SAID [*mortgagee*], for himself, his heirs, executors, and administrators, doth covenant and declare with and to the said [*trustees*], their executors, administrators, and assigns, by these presents, that he the said [*mortgagee*] hath not at any time heretofore, made, done, or committed, or knowingly or willingly permitted or suffered to be done, or been party or privy to the doing of any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said messuages or tenements and premises hereby assigned, or intended so to be, or any of them, or any part or parts thereof, or the said term of —— years therein, are, is, can, shall, or may be assigned, surrendered, forfeited, charged, affected, or incumbered in title, estate, or otherwise howsoever(*aa*). IN WITNESS, &c.

GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

Trustees to be indemnified, and to retain their expenses.

Covenant by mortgagee that he has not incumbered.

In witness, &c.

[(*aa*) " AND *it is hereby declared and agreed*, that the said [*trustees of the mortgage money*], and the survivor of them, his executors or administrators, shall stand possessed of the said sum of —— pounds, paid to them as hereinbefore mentioned, upon the trusts and for the intents and purposes hereinafter expressed concerning the same, (that is to say,) *Upon trust* forthwith to lay out and invest the same, in their or his own names or name, in the purchase of Exchequer Bills, or Navy, Transport, or Victual-

Declaration of the trusts of part of the purchase money paid to the trustees.

GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

ling Bills of the British government, until the notice hereinbefore mentioned to have been given to the said [*mortgagee*] shall have expired, or at such earlier time as he shall agree to accept his said mortgage debt; And after the expiration of such notice, or at such other time as aforesaid, *Upon trust* to sell and dispose of the said Exchequer Bills, or other securities so to be purchased as aforesaid, and out of the proceeds of such sale, and also out of the dividends and interest (if any) accruing from the said securities in the mean time; *Upon trust* (after paying and retaining the costs and expenses of obtaining an assignment of the said mortgaged premises from the said [*mortgagee*], his executors, administrators, or assigns, and otherwise attending the execution of this present trust), to pay off and discharge the said sum of [*mortgage money*], and the interest which shall be then due thereon. And if any balance or overplus shall after such payment remain in the hands of the said [*trustees*] unapplied to the purposes aforesaid; *Upon trust* to pay such balance or surplus unto the said [*grantor*], his executors, administrators, or assigns, to and for his or their own use and benefit. And *it is hereby further declared and agreed*†, and particularly the said [*grantor*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his executors, or administrators, shall and will at his or their own costs and charges, join in and execute any deed or deeds, indenture or indentures, for the purpose of authorizing and directing the said [*mortgagee*], his executors, administrators, or assigns, to assign the said leasehold and premises unto the said [*trustees of the term*], their executors, administrators, and assigns, for all the residue which shall be then unexpired of the said term of —— years, as by the said [*trustees of the term*], their executors, administrators, or assigns, shall be required; but it is hereby declared, that nothing in this present covenant contained shall extend, or be deemed or construed to extend, to render any such authority or direction from the

Covenant by grantor to execute any direction to mortgagee to assign.

[† This covenant is not necessary, and perhaps had better be omitted.]

said [*grantor*], his executors, or administrators, requisite or necessary for the purpose of warranting or authorizing the said [*mortgagee*], his executors, administrators, or assigns, to make such assignment as aforesaid, or to deliver up the title deeds of the said premises to the said [*grantee*] his executors, administrators, or assigns, which the said [*mortgagee*], his executors, administrators, or assigns, is and are hereby authorized and directed to do without any further consent or concurrence of the said [*grantor*] his executors or administrators.]

GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

[*45]

GRANT *of two distinct Annuities to two different Persons, for the Grantor's Life, charged on* LEASEHOLD *Premises for Years, demised by separate Leases*: ASSIGNMENT *of the Premises to a Trustee, Upon trust after Default in Payment, out of the Rents, or by Sale or Mortgage of the Premises, to pay the Annuities and all Costs*: AGREEMENT *that Trustee out of the Rents may keep the Premises in repair and insure them; and that in case Annuities or either of them should be in arrear twelve Months, Trustee may sell the Premises and repay the Grantee's Consideration Monies, Arrears of Annuities, and all Costs; and that monies raised for paying both Annuities shall be paid without priority*: COVENANT *from Grantor and both Grantees jointly, and any two separately from the other jointly, and each of them separately, to indemnify Trustee from Rents and Covenants in Leases assigned to him*: DEFEASANCE, *&c. on two several Judgments, for more effectually securing each of the Annuities*: *Power to* REPURCHASE *both Annuities.*

GRANT OF TWO ANNUITIES TO DIFFERENT PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—; BETWEEN [*grantor*], of, &c. Parties.

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of the first part, [*grantee*], of, &c. and [*other grantee*], of, &c. of the second part, and [*trustee*], of, &c. of the third part. WHEREAS by indenture bearing date on or about (*a*) the —— day of —— 18—, and made be-

(*a*) Sometimes *an error in the recital* of the date of the deed is *material, and may affect the validity of the title; for instance, a lease bearing date the 1st of March, is recited as bearing date the 2d of March, and then there is an assignment of all the lands which were demised by the *hereinbefore in part recited indenture of lease*. Now as there is not any such indenture of lease, there is, in point of law, no valid assignment; for, as the date in the recital is the essential part of the descriptive terms used in the assignment, the assignment itself fails in effect.

Recital of lease for years.

[*46]

Effect of mistake in recital of date of lease assigned.

Mode of avoiding consequences of mistake in recital of dates.

To avoid such and the like mistakes, the modern and correct practice of preparing the recital of deeds, as bearing *date on or about*, &c. should be more generally observed, so that the date may not be conclusively material; and as a consequence, the error may not vitiate the assignment.

The liberality of the courts of law would probably reject erroneous date, and support assignment.

The books seem agreed, that an assignment made with reference to an erroneous and positive recital would be void; yet it is likely that judges of modern times would, from the other certainties, if any, of the lease, to be collected from the names of the parties, the parcels, &c. reject the erroneous date, and support the assignment. It would not, however, be safe to rely on the liberality of the courts to interpose against rules of law established by decided cases, and founded on those principles which require that every contract should be proved by the contents of the deed which contains the evidence of the transaction; and an assignment of a lease, assumed to be dated the 1st day of April, cannot be predicated of, or pleaded or given in evidence as an assignment of a lease dated the 2d April. Equity may on those occasions of sale for a valuable consideration, &c., which give jurisdiction to that court, correct the mistake; while a court of law must take it for granted that there is another lease of the date which is recited.

Courts of equity would, when there is a valuable consideration, correct mistake.

When the recital is correct a subsequent error in referring to the date will not vitiate the deed.

Various distinctions occur on points of this sort. When the recital is correct, or an inaccuracy in the date, &c. is rendered immaterial, then a subsequent error in referring to the date will not vitiate the deeds; for instance, if the lease be recited as bearing date on or about the 2d day of March, and then the assignment is made by words to this effect: "All those messuages, &c. which were assigned by the said indenture bearing date on or about the 4th day of March;"—this error would be immaterial. In the first place, the courts may reject, as surplusage, the words on or about the 4th day of March, retaining the words, the said indenture; and even though the 2d day of March

*tween [*lessor*], of, &c. of the one part, and [*lessee*], of, &c. of the other part, for the considerations therein mentioned, he the said [*lessor*] did demise, lease, and let, unto the said [*lessee*], *All those, &c. (describe the estate as it is described in the lease)*: *To hold* to the said [*lessee*], his executors, administrators, and assigns, from the —— day of —— then last past, for and during the term of ninety-nine years: *At* and under the yearly rent of —— pounds —— shillings, payable quarterly, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——. And whereas by indenture bearing date on or about the —— day of ——, 18—, and made between [*lessor*], of, &c. of the one part, and [*lessee*], of, &c. of the other part, for the considerations therein mentioned, the said [*lessor*] did demise, lease, and to farm let unto the said [*lessee*], his executors, administrators, and assigns, *All those, &c. (take the description of the premises from the lease)*: *To hold* unto the said [*lessee*], his executors, administrators) and assigns, from the —— day of —— then last past, for the term of ninety-nine years: *At* the yearly rent of —— pounds, payable half yearly, on the ——day of ——, and the —— day of ——. And whereas by virtue of divers mesne assignments, the said indentures of lease, and the said several pieces or parcels of ground, messuages or tenements and premises respectively comprised therein, are now legally vested in the said [*grantor*], for the residue of the said several terms of ninety-nine years, and ninety-nine years therein respectively to come and unexpired. And whereas the said [*grantee*], and [*other grantee*], have contracted and agreed with the said [*grantor*] for the absolute purchase of the several and respective annuities, yearly rent-charges, or annual sums hereinafter mentioned, for and during the natural

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Recital of another lease for years.

Recital that premises demised by both leases are vested in grantor of annuity.

Recital of contract for purchase of two annuities by different persons, to be charged on leasehold estates.

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were not the true date, yet the words, *on or about*, in the recital, would relieve the case from the difficulty with which it would otherwise be attended, by the admission of the actual lease in evidence; for the actual lease will not be be at variance with the recital of the date, since the recital has guarded against the error or materiality of the recital of the date. 1 Pres. Abr. 60.

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life of him the said [*grantor*], and which said annuities or yearly sums amounting to the yearly sum of —— pounds, are to be issuing out of, and charged and charge-*able upon the said several pieces or parcels of ground, messuages or tenements, and premises granted and demised by the said in part recited indentures of lease, and hereinbefore particularly mentioned and described. And

[*48]

Recital of distinct bonds to secure each annuity.

whereas, for more effectually securing the payment of the said several annuities, yearly rent charges, or sums, unto the said [*grantee*] and [*other grantee*], their executors, administrators, and assigns respectively, for and during the life of him the said [*grantor*], he the said [*grantor*], by his several (*b*) bonds or obligations in writing bearing even date with these presents, hath become bound to the said [*grantee*] and [*other grantee*], their executors, administrators, and assigns respectively, in the several penal sums therein particularly mentioned: *Conditioned* for the payment to them respectively of their several and respective annuities or yearly sums. And the said [*grantor*] hath also duly executed two several warrants of attorney, bearing even date with these presents, authorizing and empowering certain attornies therein named to confess two several judgments against him in his Majesty's Court of King's Bench at Westminster, in two several actions of debt, for the several and respective penal sums in the said several bonds or obligations particularly mentioned, with costs, at the several and respective suits of the said [*grantee*] and [*other grantee*]. Now this indenture witnesseth, that for and in consideration of the several sums of money, amounting in the whole to the sum of —— pounds of good and lawful money of Great Britain, by the said [*grantee*] and [*other grantee*] to the said [*grantor*] in hand well and truly paid, at or before the sealing and delivery of these presents, in the proportions following, that is to say, the sum of —— pounds, part of the said sum of —— pounds, by the said [*grantee*], and the sum of —— pounds, the remainder of the said sum of

Recital of distinct warrants of attorney to confess judgment in the penalty of each annuity bond.

Testatum.

Consideration paid by two to one in moieties.

(*b*) See a form in which both of the annuities are included in one bond, Vol. 1, p. 484.

—— pounds, by the said [*other grantee*], the receipt and payment whereof the said [*grantor*] doth hereby acknowledge, and thereof, and of and from the same, and every *part and parcel thereof, doth acquit, release, exonerate, and discharge the said [*grantee*] and [*other grantee*], and each of them, their and each of their several and respective heirs, executors, administrators, and assigns, and every of them, for ever, by these presents; *He* the said [*grantor*] *hath* granted, bargained, sold, and confirmed, *and* by these presents *doth* grant, bargain, sell, and confirm unto the said [*grantee*], his executors, administrators, and assigns, *One* annuity or yearly rent-charge or sum of —— pounds, of lawful money of Great Britain [, for and during the natural life of him the said [*grantor*]]: *And* unto the said [*other grantee*], his executors, administrators, and assigns, *One* annuity, or yearly rent-charge, or sum of —— pounds of like lawful money [, for and during the natural life of him the said [*grantor*]]: the said annuities hereinbefore granted, and each of them, and every part thereof respectively, to be severally issuing and payable out of, and charged and chargeable upon, ALL THOSE the said several pieces or parcels of ground, messuages or tenements, and premises, in the said in part recited indentures, and hereinbefore particularly mentioned and described: *The* said annuities or yearly rent-charges hereby granted, and each of them, and every part and parcel of them, and each of them, to be respectively paid and payable to the said [*grantee*] and [*other grantee*], and to their several and respective executors, administrators, and assigns, yearly and every year, at or in the Common Hall of the Bank of England, between the hours of ten and twelve of the clock in the forenoon, by four equal quarterly payments, at or upon the several days and times hereinafter particularly mentioned, that is to say, on (*mention the days of payment*), in every year, by even and equal portions, without making any deduction or abatement thereout whatsoever for or on account of any taxes, rates, assessments, or other impositions whatsoever, parliamentary or otherwise: The first payment thereof respectively to begin and be made on the —— day of —— next ensuing the date hereof: and from the last quarterly

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[*49]

Grant of two distinct annuities to two different persons for grantor's life,

to be severally chargeable on leasehold parcels.

Place and time for paying annuities.

GRANT OF TWO ANNUITIES TO DIFFERENT PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

[*50]

Habendum of two distinct annuities to two different persons.

payment, or otherwise, from the date of these presents up to and including the day of the death of him the said *[*grantor*]: To have, hold (*c*), perceive, and yearly to receive, take, and enjoy the said several annuities or yearly rent-charges, hereby granted, or intended to be granted, unto the said [*grantee*] and [*other grantee*], their several and respective executors, administrators, and assigns, for and during the natural life of him the said [*grantor*] (*d*), and to be payable and paid at the times and place, and in the manner hereinbefore mentioned and appointed for payment thereof respectively, and without making any deduction or abatement thereout, or out of any part thereof, as aforesaid. And (*e*) the said [*grantor*] doth hereby also grant unto the said [*grantee*] and [*other grantee*], and each of them, their and each of their executors, administrators, and assigns, that in case the said annuities, yearly rent-charges, or sums hereby granted, or intended so to be, or either of them, or any part of them respectively, should happen to be in arrear and unpaid, for the space of thirty days next after or over any of the said days whereon the same are hereinbefore appointed to be paid as aforesaid, *Then* and in such case, and so often as it shall so happen, it shall and may be lawful to and for the said [*grantee*] and [*other grantee*], and each of them, their and each of their executors, administrators, and assigns, from time to time, into and upon all and singular the said several pieces or parcels of ground, messuages or tenements, and premises hereinbefore mentioned, and hereby charged with the payment of the said several yearly rent-charges, or into or upon any part or parcel thereof, to enter and distrain; and the distress and distresses then and there found, to take, lead, drive, and carry away and impound, and to detain and keep, until the said several annuities or yearly rent-charges hereby granted, or intended so to be, and each

Power of distress on leasehold premises for securing two distinct annuities to two different persons.

(*c*) *Vide ante*, p. 31, (*c*).

(*d*) There appears to be no objection to the grant of this annuity *pour autre vie*, to executors and administrators, the property being leasehold. *Vide* Vol. 1, p. 628.

(*e*) A power of distress is in this case absolutely requisite, the property being leasehold. *Vide* Vol. 2, p. 618.

of them, and all arrears thereof respectively so unpaid, and * all costs, charges, and expenses attending the taking and keeping such distress and distresses, shall be fully paid and satisfied; and in default of payment thereof within five days after the making of any such distress or distresses, to appraise and sell, or cause to be appraised and sold, or otherwise to dispose of such distress or distresses according to law, to the intent that thereby the said [*grantee*] and [*other grantee*], and each of them, their, and each of their executors, administrators, and assigns, shall be fully paid and satisfied their said several and respective annuities or yearly rent-charges, and all arrears thereof, and all costs, charges, and expenses to be occasioned by the nonpayment or delay of payment thereof, or of any part thereof in any respect whatsoever: AND ALSO that in case the said annuities, rent-charges, or yearly sums hereby granted, or either of them, or any part thereof respectively, should be in arrear and unpaid for the space of forty days next after or over any of the said days hereinbefore limited and appointed for the payment thereof, *Then* and so often as it shall so happen, [(although no formal demand thereof shall be made),] it shall and may be lawful to and for the said [*grantee*] and [*other grantee*], and each of them, their and each of their executors, administrators, or assigns, whose annuity or annuities, rent-charge or rent-charges, or any part or parts thereof, shall be so unpaid by the time last mentioned, into and upon all and singular the pieces or parcels of ground, messuages or tenements, and premises hereinbefore mentioned to be charged therewith, and into and upon every part thereof to enter, and the same to have, hold, and enjoy, and the rents, issues, profits. and produce thereof, and of every part and parcel thereof, to have, receive, and take, to his her, and their own respective use and uses, until he, she, or they, shall be thereby and therewith fully paid and satisfied his, her, or their annuity or respective annuities, and all arrears thereof respectively; *and also* all such arrears of the same, or either of them, as shall become due during such time as they the said [*grantee*] and [*other grantee*], or either of them, their or either of their executors, administrators, or assigns, shall, by virtue of such entry or

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[*51]

Power of entry on leasehold premises on default in paying either of two distinct annuities granted to two different persons.

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entries, be, or continue in the possession of the said premises; *together* with all costs, charges, *damages, and expenses whatsoever, which shall be occasioned by reason of the nonpayment or detention of the same, or either of them, or any part thereof respectively; and such possession, when taken, to be without impeachment of waste;

[*52]

Further testatum.

Assignment from grantor to trustee.

AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and for the further and better securing the said annuity or yearly rent-charges, and for the other purposes hereinafter mentioned, He the said [*grantor*], for and in consideration of the sum of five shillings of lawful money of Great Britain and Ireland, to him in hand paid by the said [*trustee*], at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, *hath* granted, bargained, sold, assigned (*f*), and set over;

Underlease generally preferable to assignment, because assignee becomes liable to rent and covenants, although he never takes possession.

(*f*) If it were not desirable that the trustee for sale, &c. should have the whole term, in order to create a privity of estate with the lessor, whereby the trustee would be enabled to convey to a purchaser the benefit of renewal,—an underlease, leaving a reversion of a day or so in the grantor, would be preferable: for, by accepting an assignment of the whole term, the trustee, so long as the property is vested in him, 1 Selw. N. P. 486, 5th ed. becomes liable to the payment of the rent reserved in the lease, and to the performance of the covenants, which are not confined to be performed by the covenantor himself, but which run with the land, *quia transit terra cum onere*, 3 Wooddeson's Vinerian Lectures, 87, 464, 472, Williams's n. 1 Saund. 241, (6), although he never takes possession of the premises, or exercises any acts of ownership; *Walker* v. *Reeves*, 2 Dougl. 462, in note, 3d ed.; *Sparkes* v. *Smith*, 2 Vern. 275; *Pilkington* v. *Shallow*, 2 Vern. 374: because the assignee, *Cook* v. *Harris*, 1 Ld. Raym. 367, as well as a lessee, Litt. s. 66; Co. Litt. 51, b, has the estate in him before entry, though not to bring trespass, 1 Ld. Raym. 367, that being an action founded upon possession. *Williams* v. *Bosanquet*, 3 Moore, 529; 1 Brod. & Bing. 257, S. C. The reservation of rent to the assignor, with a power of re-entry on nonpayment, or different covenants in the assignment from those in the original lease, will not discharge the liability of the assignee where the whole estate is assigned. *Palmer* v. *Edwards*, 1 Dougl. 187, in note, 3d ed. *Poultney* v. *Holmes*, 1 Str. 405, seems *contrà*, but it only determined at Nisi Prius, that an agreement by parol by *A.*, owner of a term whereof one year and three-quarters was to come, that *B.* should have it for the remainder of the term, paying to *A.* the same rent

†*and* by these presents, *doth* grant, bargain, sell, assign, and set over unto the said [*trustee*], his executors, adminis-

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as was reserved in the original lease, being void by the statute of frauds as an assignment shall be good as an underlease against *A.*, the party granting it. *Sed quære de hoc.* [*Vide post*, Vol. 4, p. 404.]

Parcels.

[*53]

* It was formerly held, that if a term be assigned by way of mortgage, with a clause of redemption, the lessor could not sue the mortgagee as assignee of all the estate, right, title, interest, &c. of the mortgagor, even after the mortgage had been forfeited, unless the mortgagee had taken actual possession. *Eaton* v. *Jaques*, 2 Dougl. 455.

Formerly held, that assignee of lease was not liable to covenants until he had taken possession:

However, actual possession is not requisite to make an assignee liable to the rent and covenants; for where the plaintiff was the original lessee of a term, which he assigned to Kay, who assigned it by way of mortgage to the defendant as a security for the repayment of a sum of money, the action was brought to recover the amount of ground-rent paid by the plaintiff during the interest of the defendant as mortgagee. The plaintiff adduced evidence to prove the defendant in possession at the time of the rents and profits. Gibbs, counsel for defendant, said he could bring evidence to disprove the possession of the defendant; but he declined to produce it, Lord Kenyon observing that it was of no consequence. The defendant, his lordship said, was liable, not on the score of possession, but as assignee: his liability was not limited by his possession; but as long as he had the legal estate, so long he continued liable to perform the covenants in the lease. If he wished to avoid that liability, he should have taken an underlease. Gibbs, citing the case of *Eaton* v. *Jaques*, his lordship said he would overrule it without the least reluctance: he had not the smallest doubt upon the subject. Accordingly a verdict was given for the plaintiff. *Stone* v. *Evans*, Woodfall's Landlord and Tenant, 103, 3d ed. chap. 3, sect. 15; Abbott on Shipping, 14, n. (*b*): and see *Westerdell* v. *Dale*, 7 Durnf. & East, 312; *Copeland* v. *Stephens*, 1 Barn. & Ald. 602, 604.

but Lord Kenyon held, that assignee of lease, by way of mortgage, was liable before entry to covenants, so long as he has the legal estate.

So in *Gretton* v. *Diggles*, 4 Taunt. 766, which was an action of covenant for nonpayment of rent, and not keeping buildings in repair, brought against the defendant, as assignee of two leases granted by the plaintiff, the one to Headon, the other to Macdonald. The defendant had pleaded, first, *non sunt facta*; 2. and 3. that Headon's and Macdonald's estates respectively, did not vest by assignment in the defendant; 4. that the defendant did not become possessed of the premises in manner and form. Upon the trial of the cause at the sittings after Hilary term, 1813, before Gibbs, J. the evidence was, that the leases were assigned to the defendant as trustee for Fidell, to whom an annuity had been granted by Headon, with the usual powers of entry and dis-

A trustee, to whom two leases were assigned in trust for securing an annuity, having said to the occupier of one of the demised houses, "You must pay the rent to me. I am become landlord for my client who has the annuity, and

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trators and assigns, ALL THOSE the said several pieces or parcels of ground, and the several messuages or tenements

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you must pay the ground rents for me:" Held, that the trustee was liable in covenant to the lessor, as assignee of both leases, for non-payment of rent and not repairing.

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tress, in trust to permit Headon the grantor to take the rents until default in payment, and thereafter to raise and pay the annuity to Fidell; and as to the surplus of the rents which might remain after discharging the annuity, in trust for Headon. A tenant who occupied one of the houses proved that Headon having become a bankrupt, the witness applied to the defendant to enquire to whom he, the witness, ought thenceforward to pay his rent. The *defendant said, you must pay the rent to me; I am become landlord for my client, who has the annuity, and you must pay the ground-rents for me. The jury, upon this evidence, found a verdict for the plaintiff.—Shepherd, Serjeant, in Easter term, moved for a rule *nisi* to set aside the verdict, and have a new trial. He urged that the defendant having no beneficial interest, nor having had any actual possession of the premises, which were in the occupation of the tenants of Headon and Macdonald, he was not liable for ground-rents and repairs. The defendant stands in the condition of a mortgagee out of possession, who, according to the case of *Eaton* v. *Jaques*, Doug. 455, is not liable to covenant as an assignee. If the mortgagee of a leasehold requires and receives the rents from the occupier, not as from his own tenant, but demanding them as the agent of the mortgagor, he might, according to the doctrine now contended for, subject himself to all the lessee's covenants in the lease; it is therefore necessary to adhere to the known line, that unless the mortgagee has recovered the actual possession he cannot be charged. The defendant could not have recovered the actual possession, because the premises were demised to other occupiers; he could only obtain the rents. At all events, the evidence applied only to Headon's house, and did not affect the defendant with the possession of Macdonald's.—Heath, J. The evidence shows an assent of the defendant to the whole conveyance.—Chambre, J. The defendant assumes the right conveyed to him in the deed.—Gibbs, J. There is evidence of an admission by the defendant that he was assignee. The defendant does that which approaches as nearly to an entry on the land assigned as was possible under the circumstances. He could not take the actual possession of the land, because it was let, but he tells the tenant that he is the landlord. This admission must be connected with the assignment and grant to the defendant, and then he stands as landlord of both houses. There was no distinction made at the trial between the cases of the one house and of the other: the only question made, was, whether the species of possession was sufficient to charge the defendant. The defendant is entitled to the receipt of the rents; this is the legal operation of the deed: all the residue is the cir-

therein erected and built, and hereinbefore particularly mentioned and described. [AND all ways, paths, passages,

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All ways, &c.

cumstance of his trust. The conversation which passed between the occupier and the defendant amounted, on one side, to an agreement to pay rent, and on the other to a claim of title.—Rule refused.

Supposing the authority of *Eaton* v. *Jaques* was recognised in the above case of *Gretton* v. *Diggles*, and consequently the determination grounded on the circumstance that the defendant had done an act which aproached as nearly to an entry on the land assigned as was possible under the circumstances, and not that the mere execution of the assignment made him liable, yet in the case of *Williams* v. *Bosanquet*, 3 Moore, 500, 1 Brod. & Bing. 238. S. C. it was held, after a special verdict argued before ten of the judges, that covenant for nonpayment of rent lies against an assignee of a lease, to whom an assignment is made by way of mortgage security, although he has never entered or taken actual possession: and Lord Chief Justice Dallas, in delivering the judgment of all the judges, said, that in the opinion of a great majority of them *Eaton* v. *Jaques* is not to be considered as having been rightly decided. 3 Moore, 536; 1 Brod. & Bing. 264. This rational decision is much more applicable to an absolute assignment of a leasehold estate to a grantee or trustee for securing an annuity.

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Covenant for nonpayment of rent lies against an assignee by way of mortgage, or for securing an annuity, although he has not taken possession.

To avoid the liability to the rents and covenants, there should be only an underlease, leaving a reversion of a few days in the original lessee; for as Lord Mansfield observed, then the landlord would have no pretext to call upon the under-lessee. *Eaton* v. *Jaques*, 2 Dougl. 459; and see to the same effect *Pilkington* v. *Shaller*, 2 Vern. 374; *Sparkes* v. *Smith*, 2 Vern. 276. An original lessor cannot maintain against an undertenant an action of debt, *Patterson* v. *Scott*, 2 Str. 776, Wms. n. 2 Saund. 302 (5), or an action of covenant, Wms. n. 1 Saund. 241 *b.* for rent, for want of privity of estate, 1 Selw. N.P. 486, 5th ed., although the undertenant was in possession when the rent became due; *Holford* v. *Hatch*, 1 Dougl. 183; and consequently it follows, that an original landlord cannot maintain an action on any other covenant in the lease, against an under-lessee, 2 Wooddeson's Vinerian Lectures, 285, 3 Ibid. 87, although he be in possession; but the goods and chattels on the premises are liable to be distrained for rent, unless privileged on account of trade, &c. *vide* Vol. 1, 610.

To avoid liability to rents and covenants in a lease intended as a security for an annuity, or for mortgage money, there should be an underlease instead of an assignment.

In a court of equity, an equitable mortgagee of a lease, who has taken possession of the premises, will be compelled to take an assignment, to enable the lessor to sue him at law on a covenant to rebuild, which attached during the time that the equitable mortgagee was in

Depositary of a lease to secure a debt decreed to take an assignment.

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lights, easements, advantages, and appurtenances whatsoever, to the said several pieces or parcels of ground, mes-

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possession, and remained unperformed. 1 Meriv. 264. Thus in the case of *Lucas* v. *Commerford*, 3 Bro. C. C. 166; 1 Ves. jun. 235, S. C., the circumstances were, that in September, 1773, Francis Atkinson demised to Richard Stapleton certain premises, containing four messuages, &c. for the term of seventy-one years, under the reserved rent of 14*l.* 14*s.* for the first ten years, of a peppercorn for the eleventh year of the term, and of 12*l.* 12*s.* for the remaining sixty years of the term; and there was a covenant in the lease that Stapleton, his executors, administrators, or assigns, should in the eleventh year of the lease pull down and substantially rebuild *the four houses situate on the premises. The defendant, Commerford, having afterwards, 28th March, 1776, lent to Stapleton the sum of 100*l.*, the latter gave him his bond for 200*l.*, with a condition for payment of the money, and a covenant, that the premises comprised in the lease should be subject to the payment of such sums. The lease was accordingly deposited with the defendant, but no assignment of it was ever executed. And in 1782, Atkinson conveyed the premises, subject to the lease, to the plaintiff; and Stapleton was since dead insolvent. The defendant took and continued in possession. About the 4th of July, 1785 (the year when, according to the covenant, the lessee was to rebuild), the plaintiff's agent accepted from the defendant Commerford 14*l.* 14*s.* as the rent due for that year; but, upon settling his accounts with the plaintiff, the mistake was discovered, and application was made to the defendant to rebuild, which he refused; on which a bill was filed for a specific performance of the covenant contained in the lease. The defendant, by his answer, stated the fact of the deposit by way of mortgage as above, and admitted he was bound to perform the other covenants in the lease, but insisted, that having no title but as mortgagee, he was not bound to rebuild. The other defendants, who were the representatives of Stapleton, stated his insolvency and death. Mr. Mitford, for the plaintiff, contended, that in this case a specific performance ought to be decreed; and for this purpose cited *The City of London* v. *Nash*, 1 Ves. 12, more fully reported 3 Atkinson, 512, where Lord Hardwicke laid it down that upon a covenant to rebuild, the landlord may come here for a specific performance, as the not building takes away his security. Mr. Mansfield, for the defendant Commerford, said, that the defendant having come into possession of this lease merely as a *deposit*, it would be very hard if he should be obliged to increase his loan by rebuilding, especially as the representatives of Stapleton might pay him off, and retake possession. —Lord Thurlow, Lord High Chancellor. "It is no matter whether the

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suages or tenements, and premises, or any of them belonging, or in any wise appertaining:] AND ALSO, all the

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All the estate, &c.

defendant took it as a pledge or as a purchase; he cannot take the estate, and refuse the burthen; it is nothing to the lessor. I am not inclined to follow that precedent, of building a house under the direction of the Court, any more than of repairing one †. Defendant must

† So in *Errington* v. *Aynesly*, 2 Bro. C. C. 343, Lord Kenyon seemed to be of opinion, that a bill for a specific performance in building a bridge could not be maintained; and appeared to be of Lord Thurlow's opinion, above stated. And see the argument in *Flint* v. *Brandon*, 8 Ves. 161.

Specific performance of a covenant to build, not enforced in equity.

In *Allen* v. *Harding*, 7 Anne, 2 Eq. Ca. Abr. 17. pl. 6, a specific performance was decreed of a covenant by a curate of a church, with *B.* to build a house upon the glebe land; but the judgment of the Chancellor was grounded on the particular circumstances, that damages, if recovered, would go to *B.*, while the covenant was designed for the benefit of the church. However, in the above cited case of *The City of London* v. *Nash*, Lord Hardwicke held, that, upon a covenant to build, the plaintiffs are clearly entitled to go into a court of equity for a specific performance, but not on a covenant to repair; for to build, he said, is one entire single thing, and if not done prevents that security which the lessor has for the rent, by virtue of the lease. So in *Mosely* v. *Virgen*, 3 Ves. 183, where the parties had covenanted to lay out a certain sum in a building of a certain value, without specifying what sort of a building was to be erected, Lord Rosslyn observed, it is commonly said no such decree can be made upon a covenant to repair; and Lord Thurlow appears to have added, that he did not see how it could be made upon a covenant to build, being equally uncertain. That certainly admits this qualification: if the transaction and agreement is in its nature defined, perhaps there would not be much difficulty to decree a specific performance: but if it is loose and undefined, and it is not expressed distinctly what the building is, so that the court could describe it as a subject for the report of the Master, the jurisdiction could not apply.

Specific performance in building decreed, under particular circumstances.

Therefore it seems, upon a view of all the cases, that specific performance of a covenant to erect any building, clearly and distinctly defined, would be now decreed by a court of equity, in cases in which the courts of common law cannot give the plaintiff adequate satisfaction in damages; but not of a covenant by a lessor, *Whistler* v. *Mainwaring*, 3 Wooddeson's Vinerian Lectures, 464, (*z*), or by a lessee, *Hill* v. *Barclay*, 18 Ves. 495, to keep the demised premises in repair; or to fill

And it seems by the better opinion, that specific performance of an agreement to build may be decreed, if sufficiently certain, but not on a covenant to repair.

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† estate, right, title, interest, term of years yet to come and unexpired, property, claim, and demand whatsoever of

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* take an assignment, in order to enable the plaintiff to bring an action. I rather think, upon reading the answer, that they would recover even without the assignment: but it is very just that they should assign absolutely, and the defendant should take it; and this will come under the general prayer for relief. If he does not do that, he must at least account. I doubt whether defendant could abandon; put the case, that he had a good legal assignment instead of a deposit, could he, as against the lessor, abandon? I think he cannot, because, as he has a title in equity to have a legal conveyance, I must consider him as having it: and then it is not in his election, but in the plaintiff's to make him keep it, and perform the covenants. The defendant being at present only an assignee in equity, no action can be brought; and the only relief I can give the plaintiff, as I cannot give him damages, is to put him in a situation to recover them. He therefore decreed that the defendant should take an assignment of the lease, and execute a counterpart, and that he must pay the costs, 3 Bro. C. C. 167; *i. e.* it seems both of the assignment and counterpart: 1 Ves. 236, thus states the decree, Let there be an assignment, and let the defendant take it, and pay the costs of it.

Equitable mortgagee of lease decreed to pay costs of assignment.

Equitable mortgagee of a lease who has not taken possession of the premises, it seems, is liable to the rent and covenants attaching while he holds the lease as a security.

According to the principle of the cases *Williams* v. *Bosanquet*, 3 Moore, 500, 1 Brod. & Bing. 238, S. C. and *Lucas* v. *Commerford*, 3 Bro. C. C. 166, 1 Ves. jun. 235, S. C. it seems that a mere depositary of a lease as a security for money, although he has not taken possession of the premises, will be liable to the rents and covenants attaching during the time he holds the lease as a security. For, in the first case, a court of law determined, that an assignee of a lease by way of mortgage is liable to a covenant for nonpayment of rent, although he has not taken possession, and consequently to any other covenant binding an assignee, *ante*, 52. And in the other case, a court of equity compelled a depositary of a lease as a security for money ‡ to take an assignment, to enable the lessor to sue him at law on a covenant to rebuild, which attached while he was in possession: on the principle

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up excavations made by digging gravel pits; *Flint* v. *Brandon*, 8 Ves. 159; or of covenants, contained in a lease which had expired, to repair hedges and a mansion house; *Rayner* v. *Stone*, 2 Eden, 128; in which case a demurrer was allowed to a bill by the landlord for an account of loppings cut, and dung removed, by the tenant; common covenants in husbandry not being the subject of equitable jurisdiction.

[‡ As to deposit securities, *vide post*, Vol. 5, p. 461.]

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him, the said [*grantor*], of, in, and to the same and every part thereof. To HAVE AND TO HOLD the said several pieces or parcels of ground, messuages or tenements, erections and buildings, and all and singular other the premises hereby bargained, sold, and assigned, or expressed and intended so to be, with their and every of their appurtenances, unto the said [*trustee*], his executors, administrators, and assigns, for and during all the rest, residue, and remainder of the said several terms of ninety-nine years and ninety-nine years, in and by the said recited indentures of lease granted respectively, and now to come and unexpired: *together* with the said recited indentures of lease, and all mesne assignments thereof (*g*): *But nevertheless upon the trusts*, and to and for the ends, intents, and purposes hereinafter mentioned, expressed, and declared, of and concerning the same; that is to say; UPON TRUST, and to and for the intent and purpose, that in case the said annuities or yearly sums hereby granted or intended so to be, or either of them, or any part of them respectively, should be in arrear and unpaid for the space of sixty days, next over or after any of the said days hereinbefore appointed for payment thereof, *Then*, and so often as it shall so happen, the said [*trustee*], his executors, administrators, or assigns, shall and may enter upon the said several pieces, or parcels of ground, messuages or tene-

Habendum for residue of term,

with lease and mesne assignments,

Upon trusts after declared, viz.

If either annuity be in arrear sixty days, to pay it, with all costs, out of rents, or by sale or mortgage of premises:

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that having a title in equity to a legal conveyance, he must be there considered as having it; and that, if the legal estate had been in him, he might have been sued at law on the covenants in the lease, whether he had entered into any personal covenant or not. 1 Meriv. 264.

To avoid this liability, when a lease is deposited by way of mortgage security, there should be an agreement in writing for an underlease.

Agreemant for underlease avoids this liability.

(*g*) There may be added here,

"*Subject* nevertheless to the rents and covenants in and by the said recited indenture of lease reserved and contained, and which on the tenant or lessee's part and behalf are and ought to be performed, observed, fulfilled, and kept; *But*, &c." *ut supra.*

Subject to the rents and covenants.

However, whether this clause be inserted or not, the assignee is liable to the rents and covenants. *Vide ante*, p. 52, (*a*).

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ments, and premises so assigned to him as aforesaid; and by and out of the yearly and other rents, issues, and profits thereof; or by sale or mortgage of the said premises, or any part thereof, for and during the remainder of the said several terms of ninety-nine years and ninety-nine years; *or by all or any of the ways and means aforesaid, or by

[*60] such other ways and means as the said [*trustee*], his executors, administrators, or assigns, shall think fit, raise and levy such sum and sums of money as shall be sufficient to satisfy unto the said [*grantee*] and [*other grantee*], respectively, and their respective executors, administrators, and assigns, their said several annuities or yearly sums, or so much thereof respectively as shall from time to time happen to be in arrear and unpaid as aforesaid; and all such costs, charges, and expenses, as the said [*trustee*], his executors, administrators, or assigns, or the said [*grantee*] and [*other grantee*], or either of them, their, or either of their executors or administrators, shall sustain, pay, expend, or be put unto, for or by reason or means of the nonpayment or detention of the same, on the days and times, and in manner before appointed for payment thereof; and also all such costs, charges, and expenses as he the said [*trustee*], his executors, administrators, or assigns, shall be put to, in or about the execution of the trusts aforesaid: AND from and after full payment and satisfaction of the said annuities, and each of them, and all such costs, charges, and expenses as aforesaid; *And* in the mean time, and until default shall happen to be made in payment of the same annuities, or either of them, or any part or parts of them, or either of them, UPON TRUST to permit and suffer the said [*grantor*], his executors, administrators, or assigns, to possess and enjoy the said several pieces or parcels of ground, messuages or tenements, and premises, hereby assigned or expressed and intended so to be, with their appurtenances; and to receive and take the rents, issues, and profits thereof, and of every part thereof, to his and their own use and benefit. AND *it is hereby mutually agreed and declared* between and by all the said parties, and particularly the said [*grantor*], [for himself, his executors and administrators,] doth [grant, covenant,] declare, and agree [to and with

after satisfaction, or until default in paying annuity, to permit grantor to receive rents.

Agreement by grantor that trustee, out of rents, may keep premises in repair;

the said [*trustee*], his executors, administrators, and assigns, by these presents, in manner following, that is to say]; that it shall and may be lawful to and for the said [*trustee*], his executors, administrators, and assigns, from time to time, and at all times hereafter, by, with, and out *of the rents and profits of the said several premises hereby assigned or expressed or intended so to be, to repair, uphold, sustain, and keep, all and every the said messuages or tenements and premises, in, by, and with, all and all manner of needful and necessary reparations and amendments whatsoever, when, where, and so often as need or occasion shall be or require: AND ALSO to insure such sum or sums of money, as he or they shall think fit, on the said several messuages or tenements and premises, or any part or parcel thereof, in any of the public offices for insuring houses against fire: AND in case the said several messuages or tenements and premises, or any of them, should be burnt down, damaged, or injured by fire, that the money which shall or may be recovered by virtue of such insurance, shall be laid out and expended in and towards the repairing, rebuilding, and making good the damage done to the said several messuages or tenements and premises, or any part thereof; and the said money shall not be used for, or converted to any other purpose whatsoever: AND FURTHER, that in case default should happen to be made, in payment of the said several annuities or yearly sums, or either of them, on the days and times hereinbefore mentioned, for payment thereof respectively, and the same or any part thereof should be in arrear for the space of twelve calendar months next after any of the said days respectively, being lawfully demanded at any time after the expiration of the said twelve calendar months, and not paid when demanded; that then, and in such case, it shall and may be lawful to and for the said [*trustee*], his executors, administrators, or assigns, to sell and dispose of the said several pieces or parcels of ground, messuages or tenements and premises, hereby assigned, or expressed and intended so to be, for the best price or prices that can or may be had or gotten for the same, to any person or persons whomsoever: AND UPON THIS FURTHER TRUST, that

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and that trustee may insure premises in any sum:

money to be recovered under policy to be expended in rebuilding premises:

that in case annuities, or either of them, should be in arrear twelve months, trustee may sell leaseholds;

and repay

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the said [*trustee*], his executors, administrators, and assigns, do and shall, by and out of the monies which shall be raised by such sale or sales, in the first place pay and satisfy unto the said [*grantee*], and [*other grantee*], and their executors, administrators, and assigns, the sum of * —— pounds, by them advanced to the said [*grantor*] as aforesaid, to be equally divided between them, together with all arrears of the said annuities, to them granted as aforesaid, which shall or may be then due and owing; and all costs and charges in respect thereof (*h*); *And* after payment thereof, and of all such costs, charges, and expenses, as the said [*trustee*], his executors, administrators, or assigns may be put unto, or bear, pay, or

grantee's consideration monies, arrears of annuities, and all costs of grantees and trustee,

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Whether a trust to repay grantee his consideration is liable to objection on the ground of usury.

[(*h*) In the opinion of some persons, a trust of this nature for securing to the grantee of an annuity the return of his consideration money, renders the transaction (assuming the annuity to be more than five per cent. on the purchase money) usurious; an absolute trust, under which the consideration money would be payable at a given event or period, free from all hazard or contingency, would, it is conceived, be exposed to this objection; but it will be perceived, that not only in this case may the grantor, by the punctual payment of the annuity, prevent the trust for sale from coming into operation, but it is also liable to be defeated by the determination of the annuity on the decease of the persons for whose lives it is granted. This contingency clearly takes the case out of the principle in question, and, in truth, constitutes the great distinction between a loan at interest and an annuity. It seems desirable to make the money by the terms of the trust payable only in the event of the annuity being undetermined at the time of its application.

The trust in the text should then recive the following alteration:—

" By and out of the monies, &c. in the first place pay and satisfy unto the said [*grantee*] and [*other grantee*], their executors, administrators, or assigns all arrears of the said annuities, to them granted as aforesaid, and all costs and charges in respect thereof. And also *in case the said annuities shall be then subsisting and undetermined*, pay and satisfy unto the said [*grantees*], their executors, administrators, or assigns, the sum of —— hundred pounds, as and for the repurchase or redemption of the same, to be equally divided between them, &c."]

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expend, in or about the execution of the said trusts, then UPON TRUST to pay the residue of such purchase money which shall then remain (if any) unto the said [*grantor*], his executors, administrators, or assigns: AND then, and in such case, the said annuities or yearly sums hereby granted shall cease and determine; and these presents(*i*), and also the said bond, shall be delivered up to be cancelled, and satisfaction on the said judgment shall be duly acknowledged on record; any thing hereinbefore contained to the contrary thereof in anywise notwithstanding. AND *it is hereby agreed and declared* between and by the said [*grantee*], and [*other grantee*], that such sums of money as shall be raised under the trusts hereinbefore declared, for the purpose of paying and satisfying the said two several annuities or yearly sums of —— pounds and —— pounds, and such costs, charges and expenses as aforesaid, shall be payable and paid to them the said [*grantee*] and [*other grantee*] respectively, or to their respective executors, administrators, or assigns, without any priority or preference of either of them, his executors, administrators, or assigns, to the other of them, his executors, administrators, or assigns. AND *it is hereby further mutually agreed and declared*, between and by all the said parties, and particularly by the said [*grantor*], that the payment of the whole or any part of the purchase or mortgage money, or of the rents and profits, of the premises hereby or intended to be hereby assigned as aforesaid, or any part thereof, unto the said [*trustee*], his executors, administrators, or assigns, by the purchaser or purchasers, mortgagee or mortgagees, or tenant or tenants, of the said premises, or any part thereof, shall be and be deemed a *good and effectual payment thereof: *And* that the receipt or receipts of the said [*trustee*], his executors, administrators, or assigns, for such purchase or mortgage money, or for such rents and profits, or any part thereof respectively, shall be a good and sufficient receipt, release, and discharge, or good and sufficient receipts, releases, and discharges, to the person or persons paying the same, or for so much thereof, as in such receipt or receipts shall

and to pay residue to grantor:

upon repayment of consideration money, &c. annuities to cease, assignment and bond to be cancelled, and satisfaction acknowledged on judgment.

Agreement between two annuitants, that monies raised for paying both annuities shall be paid without priority.

Payments of purchase or mortgage money, or rents and profits to trustee, to be good payments, and his receipts to be sufficient discharges:

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(*i*) *Vide ante*, p. 43.

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be expressed and acknowledged to be received: *And* that such purchaser or purchasers, mortgagee or mortgagees, tenant or tenants, shall not be under the necessity of seeing the money which he or they shall pay to the said [*trustee*], his executors, administrators, or assigns, applied for the purposes aforesaid; nor be in anywise answerable or accountable for the misapplication or nonapplication thereof; nor be obliged to inquire into the reason or necessity of such sale or mortgage, or of the receipt of such rents and profits by the said [*trustee*], his executors, administrators, or assigns. AND THE SAID [*grantor*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise and agree, with and to each of them the said [*grantee*] and [*other grantee*], and the executors, administrators, and assigns of each of them (*k*), that he the said [*grantor*] his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto each of them the said [*grantee*], and [*other grantee*] respectively, and to their respective executors, administrators, or assigns, for and during the natural life of him the said [*grantor*], the annuity or yearly sum of —— pounds hereinbefore granted to each of them the said [*grantee*], and [*other*

Purchasers, &c. not to be obliged to see the application of purchase monies, &c.

Covenant by grantor to pay two distinct annuities granted to two different persons.

Covenant to pay annuities construed as a separate covenant.

[(*k*) By deed reciting the grant of two distinct annuities to *A.* and *B.* during the life of the grantors and the survivor, it was witnessed that *C.* covenanted with *A.* and *B.* and their executors to pay the annuities, or either of them, when the grantors should make default in payment. *A.* died, and it was held, that the interest in the annuities being several the covenant was also several, and that the annuity granted to *A.* being in arrear, his executor might maintain an action against *C.* *Withers* v. *Bircham*, 5 Dowl. & Ryl. 106; *S. C.* 3 Barn. & Cress. 254.]

[But where in an action of covenant against the executors of *A.*, the plaintiff declared that *A.* covenated with him and two other persons, that his executors, &c. should, on a certain event, pay to them an annuity for the use of a third person, and averred that the other two covenantees never executed the deed, it was held, on demurrer, that the declaration was bad, inasmuch as it did not appear that the covenantees, who had not joined in the action, had refused to assent to the deed, and their assent was therefore to be presumed; consequently, upon the general rule that all joint covenantees or obligees must sue, the action was not well brought. *Petrie* v. *Bury*, 5 Dowl. & Ryl. 152; *S. C.* 3 Barn. & Cress. 353.]

grantee] respectively, and to their respective executors, administrators, and assigns, and also such proportional part thereof as aforesaid, free from taxes, and clear of all other deductions whatsoever, at the days and times, and in manner and form hereinbefore limited and appointed for payment thereof: AND ALSO that he the said [*grantor*], now hath in himself good right, full power, and lawful and absolute authority by these presents, to charge all and singular the said several pieces or parcels of ground, messuages, or tenements, and premises, and every part and parcel* thereof, with the payment of the said annuity, or yearly sum of —— pounds, unto each of them the said [*grantee*] and [*other grantee*] respectively, and to their respective executors, administrators and assigns, during the life of him the said [*grantor*], in manner aforesaid. AND THE SAID [*grantor*], for himself, his executors, and administrators, doth by these presents covenant, promise, and agree to and with the said [*trustee*], his executors, administrators, and assigns, (*add Covenants for Title, &c.* ut ante, p. 36: AND) that he the said [*grantor*], his executors and administrators, shall and will from time to time, and at all times hereafter, at the request of the said [*trustee*], his executors, administrators or assigns, but at the costs and charges of the said [*grantor*], his executors, or administrators, make, do, and execute, or cause, or procure to be made, done, and executed, all and every such further and other lawful and reasonable act and acts, thing and things, conveyances and assurances in the law, for the further, better, and more perfectly assigning and assuring the said several pieces or parcels of ground, messuages, or tenements and premises, unto the said [*trustee*], his executors, administrators, and assigns, for the rest, residue, and remainder, which shall be to come and unexpired, of and in the said several terms of ninety-nine years and ninety-nine years therein respectively granted by the said in part recited indentures; upon the trusts nevertheless, and to and for the ends, intents, and purposes hereinbefore mentioned; *As* by the said [*trustee*], his executors, administrators, or assigns, or his or their counsel learned in the law, shall be reasonably advised or devised

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And that he hath power to charge leasehold premises therewith.

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Covenant with trustee for title, &c. and for further assurance of leaseholds.

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and required (*l*). PROVIDED ALWAYS, *and it is hereby de-*
clared and agreed, by and between the said [*grantee*], and [*other grantee*], and [*grantor*], that the respective

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Defeazance on two several judgments for more effectually securing two distinct annuities to different persons.

(*l*) As a trustee to whom a leasehold estate is assigned upon trusts for securing an annuity has no beneficial interest in the premises, the assignment being made to him for the benefit of the grantees and the grantor, he appears to be entitled to a covenant from them for indemnity against the rents and covenants of the leases; however, the grantor alone usually covenants for this purpose, *ut ante*, p. 39; but if both the grantor and grantee join in the covenant, it may be as follows:

Trustees entitled to covenant from grantor and grantee, for indemnity against rents and covenants in lease.

"AND THE SAID† [*grantor*], [*grantee*], and [*other grantee*], do hereby for themselves, their heirs, executors, and administrators, jointly; *and* any two‡ of them, separately and apart from the other of them, do hereby for themselves, their heirs, executors, and administrators, jointly; *and* each of them separately and apart from the others and other of them, doth hereby for himself, his heirs, executors, and administrators, severally covenant, promise, and agree with and to the said [*trustee*], his executors, administrators, and assigns, that they the said [*grantor*], [*grantee*], and [*other grantee*], or some or one of them, or their, some or one of their heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, at their or his, or some or one of their own proper costs and charges, protect, defend, and save harmless, and keep indemnified the said [*trustee*], his heirs, executors, and administrators, and his and their lands and tenements, goods, chattels, and effects, from, and

Covenant from grantor and two grantees of annuities jointly, and any two separate from the other, jointly, and each of them separately, to indemnify trustee from rents and covenants in leases assigned in trust to secure annuities.

† If there be only one grantee, the covenant may be,

Covenant to indemnify trustee from rents and covenants in leases.

"AND THE SAID [*grantor*] and [*grantee*] do hereby for themselves, their heirs, executors, and administrators; *and* each of them doth hereby for himself, his heirs, executors, aad administrators, covenant promise, and agree with and to the said [*trustee*], his heirs, executors, and administrators, that they the said [*grantor*], and [*surety*], or one of them, their or one of their heirs, executors, or administrators, shall and will &c." *ut supra.*

‡ *Vide* Vol. 1, p. 311, (*a*); 502, (*a*).

*judgments so to be entered up against the said [*grantor*], at the suit of each of them the said [*grantee*], and [*other grantee*] respectively as aforesaid, shall be considered as a security only, for better and more effectually securing the payment of the annuity or yearly sum of——pounds hereinbefore granted to each of them the said [*grantee*] and [*other grantee*] respectively, and to their respective executors, administrators, and assigns, during the life of him the said [*grantor*], at the several days and times, and in the manner hereinbefore limited and appointed for payment thereof respectively, and of such proportional part thereof as aforesaid: AND that no execution or executions shall be issued or taken out upon either of the said judgments, unless and until the whole or a part of some quarterly payment of the annuity or yearly sum of—— pounds, intended to be thereby more effectually secured, shall be in arrear for twenty-one days next after some or one of the days or times hereinbefore limited and appointed for payment thereof as aforesaid: AND when and so often as either of the said annuities or yearly sums of —— pounds, hereinbefore granted to the said [*grantee*] and [*other grantee*] respectively, and to their respective executors, administrators, and assigns, or any part thereof, or such propor-

GRANT OF TWO ANNUITIES TO DIFFERENT PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

When either annuity shall be in arrear, execution to be sued on judgment:

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against the payment of the rents and performance of the covenants reserved and contained in the said in part recited indentures of lease, or either of them respectively, [or any counterparts thereof, or either of them respectively,] to be paid and performed by the respective lessees, their executors, administrators, and assigns, for or in respect of the premises thereby respectively demised: *And also* from and against all costs, losses, damages, claims, and demands whatsoever which he or they shall or may incur, bear, pay, suffer, sustain, or lay out, for or by reason or means, or on account of the same rents or covenants: *And also* from and against all actions at law and suits in equity, which at any time or times, or from time to time hereafter shall be brought, commenced, or prosecuted against him the said [*trustee*], his heirs, executors, or administrators, for or on account of the said rents or covenants."

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tional part thereof as aforesaid, shall be in arrear, and unpaid for the space of twenty-one days next over or after any of the days or times hereinbefore limited and appointed for payment thereof, and then and so often, and in every such case, it shall and may be lawful to and for such of them the said [*grantee*] and [*other grantee*] respectively, and their respective executors, administrators, and assigns, whose annuity or annuities shall be in arrear, to sue out such execution or executions upon or by virtue of the said

[*67] *respective judgmants as he or they shall think fit or be advised, for the recovery of the arrears of such annuity or respective annuities, and every part thereof; and all costs and charges which the said [*grantee*] and [*other grantee*] respectively, and their respective executors, administrators, or assigns, or any of them, shall bear, pay, sustain, or be put unto, for or by reason or means of the nonpayment thereof: AND that it shall not be necessary for the said [*grantee*] and [*other grantee*] respectively, or their respective executors, administrators, or assigns, to revive or cause the said respective judgments to be revived, or do any act, matter, or thing, to keep the same on foot, notwithstanding the said judgments respectively shall have been entered on record for the space of one year or upwards, and notwithstanding any rule or practice of the said Court of King's Bench to the contrary: AND that the said [*grantor*], his heirs, executors, or administrators, shall not nor will have, take, receive, or attempt, by any ways or means, to have or receive any advantage in consequence of not reviving or keeping the said judgments respectively on foot. PROVIDED ALWAYS, *and it is hereby agreed and declared,* that from and after the decease of the said [*grantor*], and full payment of all arrears of the said several annuities or yearly sums of fifty pounds, hereinbefore granted to each of them the said [*grantee*] and [*other grantee*] respectively, and their respective executors, administrators and assigns, and such proportional part thereof as aforesaid, and all such costs, charges, damages, and expenses as aforesaid, and all other costs, charges, damages, and expenses in anywise relating to the said respective judgments and premises, they the said [*grantee*] and [*other grantee*] respectively, and their respective executors, ad-

that it shall not be necessary for either grantee to revive his respective judgment:

grantor not to take advantage of not reviving judgment.

On death of grantor and payment of all arrears and all costs, satisfaction to be acknowledged on two several judgments, for more effectually securing two distinct annuities to different persons.

ministrators, or assigns, shall and will upon the request, and at the costs and charges of the heirs, executors, administrators, or assigns of him the said [*grantor*], acknowledge satisfaction of the said respective judgments upon the record thereof; *And* then, &c. (*trustee to reassign*, ut post, p. 69.) PROVIDED ALWAYS, *and it is hereby declared and agreed* by and between the said parties to these presents, to be the true intent and meaning of them and of these presents, and particularly the said [*grantee*] *and [*other grantee*], for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, do, and each of them doth hereby covenant, promise, and agree with and to the said [*grantor*], his heirs, executors, administrators, and assigns, that in case the said [*grantor*], his heirs, executors, administrators, or assigns, should at any time hereafter be minded and desirous of repurchasing the said several annuities or yearly sums of —— pounds, and —— pounds, and of such his or their intention, should give unto the said [*grantee*] and [*other grantee*], respectively, their respective executors, administrators, or assigns, ten days notice in writing, that they the said [*grantee*] and [*other grantee*] respectively, their respective executors, administrators, or assigns, shall and will, at the end of the said ten days, from the time such notice shall be given as aforesaid, on receiving all and every sums and sum of money whatsoever, then due for the arrears of the said several annuities or yearly sums of —— pounds, and —— pounds, together with proportional parts thereof respectively from the last day of payment thereof preceding such repurchase, or otherwise from the date of these presents, if such repurchase should be made before any quarterly payment thereof shall become due, up to and including the day of repurchasing the same, accept, receive, and take the sum of —— pounds, in equal shares and proportions, [being the original purchase money, and two quarterly payments of the said several annuities or yearly sums of —— pounds, and —— pounds] as and in full for the repurchase of the same several annuities or yearly sums: *And* on receipt of the said sum of —— pounds, and all arrears of the said several annuities or

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Power to repurchase two distinct annuities granted to different persons, on ten days' notice, and paying original purchase money and half a year's payment on each of the annuities in advance, with a proportional part to the time of repurchase.

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yearly sums of —— pounds, and —— pounds, and such proportional part thereof as aforesaid, shall and will respectively, at the proper costs and charges in the law of him the said [*grantor*], his heirs, executors, administrators, or assigns, deliver each of the said two several bonds to the said [*grantor*], his heirs, executors, administrators, or assigns, to be concelled; *And* respectively acknowledge, or cause to be acknowledged, satisfaction on the records of the respective judgments which shall be entered by virtue of each of the said several *warrants of attorney: *And* then and in such case the said several annuities or yearly sums of —— pounds, and —— pounds, and the trusts, powers, and remedies herein contained for securing the payment thereof, shall cease, determine, and be void; *And* then and in such case the said [*trustee*], his executors, administrators, or assigns, shall and will, at the request, costs, and charges of the said [*grantor*], his executors, administrators, or assigns, assign and convey the said several pieces or parcels of ground, messuages, or tenements and premises, hereby assigned, or intended so to be, or so much and such part of them as shall not have been sold and disposed of under the trusts hereinbefore contained, unto the said [*grantor*], his executors, administrators, or assigns, or as he or they shall direct or appoint. IN WITNESS, &c.

On repurchase bonds to be cancelled; satisfaction acknowledged on judgment;

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annuities and remedies to cease:

and trustee to re-assign.

In witness, &c.

GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

GRANT *by* ASSIGNMENT *of Three Annuities of —— pounds, —— pounds, and —— pounds; the first Sum being entitled for the separate use of the Grantor's Wife, she appoints the same under a Power to a Trustee: the second Sum being settled on Husband and Wife, and the last Sum being payable to the Wife if she survive her Husband, they assign both* (*a*) *Sums to the Trustee;* UPON TRUST, *to pay an Annuity of —— pounds, previously granted by them; and subject thereto to pay the present Grantee an Annuity of —— pounds during the Wife's Life; and subject thereto, during the Joint Lives of the Grantor and his Wife, to pay the Surplus of the Annuities of —— pounds, and —— pounds, as the Wife shall by writing appoint; and in default of appointment, to her separate use; and if Grantor should die before his Wife, to pay the Surplus of the Annuity of —— pounds to her:* DEFEASANCE *to Warrant of Attorney; Covenant by Grantee, that Husband or Wife may* REPURCHASE *the Annuity of —— pounds, or any part not less than a fifteenth, at a fixed Sum.*

THIS INDENTURE, made the —— day of ——, [in the —— year of the reign, &c. and] in the year of our Lord 18—; BETWEEN [*grantor*], of, &c. and [*wife*] his wife, (which said [*wife*] before her marriage with the said [*grantor*], was the wife, and afterwards the widow and relict of [*testator*], late of —— Street in the county of Middlesex, Esquire, deceased), of the first part; Parties.

(*a*) *Vide infra*, p. 77 (*f*).

GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

*[*grantee*], of, &c. of the second part, and [*trustee*], of, &c. of the third part. WHEREAS the said [*testator*], deceased, being in his life time, and at the time of his decease, seised, possessed of, or entitled to divers freehold, copyhold, and leasehold estates, and also considerable Bank Annuities and other funds, securities, and personal estate, did duly sign and publish his last will and testament in writing, bearing date on or about the —— day of — , 18—, and did thereby (amongst other things) bequeath to the said [*wife*], then his wife, and afterwards his widow and relict, in lieu of her settlement if she survived him, during her natural life, his leasehold house in —— Street aforesaid: *And* to enable her to live comfortably therein, he willed that his executors thereafter named, should pay her, out of the whole produce of his estate, the yearly sum of —— pounds; the first quarterly payment to be due on the day of his decease, and so on quarterly during her natural life: *And* the said testator did appoint [*executor*], [*son*] (his son and residuary devisee), and [*other executor*], and the said [*wife, widow name*], executors of his said will. AND WHEREAS the said [*testator*] departed this life in or about the month of —— 18—, without having revoked or altered his said will. AND WHEREAS the said [*son*], [*other executor*], and [*wife, by her widow name*], duly proved the said will of the said [*testator*], soon after his decease, in the Prerogative Court of the Archbishop of Canterbury. AND WHEREAS the said [*wife, widow name*], made her election to take under the will of the said [*testator*], deceased, and to accept the gifts and bequests in her favour contained in the said will, in lieu of, and as a satisfaction for the provision made and provided for her by a certain indenture, bearing date on or about the —— day of ——, 18—, being the settlement referred to by the said will of the said testator [*testator*]. AND WHEREAS by indenture bearing date on or about the —— day of ——, 18—, made between the said [*executor*], of the first part; the said [*wife*], by her then name of [*widow name*], of the second part; the said [*executor*] (the son), of the third part; and [*trustee*], of, &c. of the fourth part; the messuages and other hereditaments, stocks, funds, securities, and other personal

Recital of bequest of an annuity of —— pounds, &c. to grantor's wife by her former husband, in lieu of the provision made for her by his marriage settlement;

annuity to be paid out of testator's real and personal estate;

appointment of executors:

death of testator:

proof of will.

Election of widow to take the bequests in her former husband's will in lieu of the provision made for her by his settlement.

Recital of conveyance of testator's real and personal estate to trustees, in trust, thereout to pay his widow the annuity for her life.

GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

*estate and effects in the indenture now in recital mentioned, and then late belonging to the said [*testator*], the testator, were conveyed and assigned respectively to the said [*executor*], [*son*] (the son), and [*trustee*], *Upon trust*, during the life of the said [*wife, widow name*], by and out of the rents, issues, and profits, interest, dividends, and annual produce of the said real and personal estate, to pay to the said [*wife, widow name*], and her assigns, during her life, *One* annuity or yearly sum of —— pounds, by quarterly payments, in manner therein mentioned. AND WHEREAS by indenture bearing date on or about the —— day of ——, 18—, and made between said [*wife, widow name*], of the first part; [*grantor*], of the second part; [*two trustees*], of, &c. of the third part; and the said [*executor*] [*son*] (the son), and [*trustee*] of the fourth part, in consideration of a marriage then intended, and shortly afterwards had and solemnized between the said [*grantor*] and [*wife, married name*], then [*widow name*], and for other the considerations therein mentioned, the said [*wife, widow name*], (with the consent and approbation of the said [*grantor*], her then intended husband,) did grant, bargain, sell, and assign unto the said [*two trustees*], their executors, administrators, and assigns, *The* said annuity or yearly sum of —— pounds, payable to her the said [*wife, married name*], then [*widow name*], and her assigns, during her life, as hereinbefore is mentioned: *To hold* the same unto the said [*two trustees*], their executors, administrators, and assigns, during the joint lives of the said [*wife, married name*], then [*widow name*], and [*grantor*], *In trust* for the said [*wife married name*], then [*widow name*], until the said then intended marriage between her the said [*wife, married name*], then [*widow name*], and [*grantor*], should take effect; *And* after the solemnization thereof, then *Upon trust*, that they the said [*two trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, should receive the said annuity or yearly sum of —— pounds, as the same should from time to time grow due; *And* thereout, in the first place, from time to time, during the joint lives of the said [*wife, married name*], then [*widow name*], and [*grantor*], pay,

Recital of settlement on marriage of widow with grantor, whereby the annuity of —— pounds was vested in trustees, in trust, during the lives of husband and wife, to pay —— pounds a year as she should appoint, and in default of appointment, to her separate use; the remaining —— pounds a year to be paid to husband and wife; on the decease of husband, the whole —— pounds a year to be paid to wife.

GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

*or cause to be paid, into the proper hands of the said [*wife, married name*] then [*widow name*], for her own sole and separate use and benefit; or to such person or persons as she by writing signed with her proper hand should, notwithstanding her said then intended coverture, from time to time direct or appoint, the clear annual sum of —— pounds: *And* her receipts alone, or the receipts of such person or persons as she should appoint to receive the same, should be good discharges for the same, or so much thereof as in such receipts should be expressed or acknowledged to be received: *And upon further trust,* that the said [*two trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, should pay to the said [*grantor*] and [*christian name*], his then intended wife, the remainder of the said annuity or yearly sum of —— pounds, after payment of the said annual sum of —— pounds: *And* it is by the indenture now in recital declared, that after the death of the said [*grantor*], the estate of the said [*two trustees*], their executors, administrators, and assigns, and the trusts thereby created, should immediately cease and determine; and the said annuity or yearly sum of —— pounds should thenceforth go, and be wholly paid and payable to the said [*wife, married name*], during the term of her natural life: *And* in the indenture now in recital is contained a proviso, that in case the said [*two trustees*] or either of them, should happen to die before the trusts of the said indenture should be fully performed, or should be desirous of being discharged from, or refuse, decline, or become incapable to act in the execution of the said trusts, then it should be lawful for the said [*grantor*] and [*christian name*], his then intended wife, to nominate one or more trustee or trustees in the place or stead of him or them so dying, desirous of being discharged from, or refusing, declining, or becoming incapable to act in the trusts aforesaid. AND WHEREAS the said [*two trustees*], having declined to act in the trusts created by the lastly hereinbefore recited indenture, the said [*grantor*], and [*christian name*] his wife, did nominate and appoint [*new trustee*], of, &c. a trustee in the place *of said [*old trustee*]; and [*other new trustee*], of, &c. a

recital of power in settlement to appoint new trustees.

Recital that trustees of settlement having declined to act, husband and wife appointed new trustees in their stead.

GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

trustee in the place of said [*other old trustee*]; and proper deeds were executed for that purpose. AND WHEREAS the said [*grantor*] and [*christian name*] his wife, some time since granted an annuity or yearly sum of —— pounds to [*annuitant*], of, &c. payable during the life of her the said [*wife, married name*], and charged the same on the said annuity or annuities to which they are so respectively entitled as hereinbefore is mentioned. AND WHEREAS the said [*other new trustee*] having declined to act in the said trusts, the said [*annuitant*] hath been duly nominated and appointed a trustee in the place of the said [*other new trustee*]; and proper deeds have been executed for that purpose. AND WHEREAS the said [*new trustee*] hath lately departed this life, and no new trustee hath yet been appointed in his place, whereby the said [*annuitant*] hath become the surviving trustee for executing the trusts created by the said lastly hereinbefore recited indenture. AND WHEREAS the said [*grantor*] and [*christian name*] his wife, have contracted and agreed with the said [*grantee*], for the absolute sale to him the said [*grantee*], of an annuity or clear yearly sum of —— pounds, to be paid to the said [*grantee*], his executors, administrators, and assigns, during the natural life of the said [*wife, married name*], and to be secured as hereinafter is mentioned, at or for the price or sum of —— pounds, but subject to be repurchased as hereinafter is mentioned: [(*b*) *And* it was, on the treaty for the sale of the said annuity, agreed that all the costs and charges of preparing and perfecting the securities for the same should be borne by the said [*grantor*].] AND WHEREAS in pursuance and performance of the said agreement on the part of the said [*grantee*], he hath this day paid the sum of —— pounds to the said [*grantor*], [(*c*) in notes of the Governor and Company of the Bank of England, payable to bearer on demand], at the request and by the direction of the said [*wife, married name*], testified by her executing these presents; [(*b*) *And* the said [*grantor*] *hath paid the sum of —— pounds —— shillings and —— pence to [*attornies*], of, &c. attornies at law, in full, for their bill

Recital that husband and wife previously granted an annuity during wife's life, charged on the annuities before mentioned.

Recital that one of the trustees having declined to act, annuitant was appointed in his stead:

and that the other trustee being dead, and no other appointed in his stead, annuitant was surviving trustee.

Recital that husband and wife had contracted with grantee for sale of an annuity of —— pounds during wife's life;

costs of securities to be paid by grantor.

Recital that grantee had paid consideration to grantor, with privity of wife;

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and that grantor had paid costs of securities.

(*b*) *Vide* Vol. 1, p. 460, (*b*). (*c*) *Vide* Vol. 1, p. 460, (*a*).

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of costs for securing the said sum of —— pounds for the said annuity, and preparing and perfecting the securities for the same.] AND WHEREAS in pursuance of the said agreement on the part of the said [*grantor*], he the said [*grantor*] hath this day executed a certain deed-poll, or warrant of attorney, bearing even date with these presents, authorising certain attornies therein named to confess a judgment against him in his Majesty's Court of —— at Westminster, in an action of debt, for the sum of [*double the purchase money*] pounds, for money borrowed, at the suit of the said [*grantee*], his executors or administrators, and costs of suit (*d*). NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement on the part of the said [*grantor*], and in consideration of the said sum of —— pounds so by the said [*grantee*] to the said [*grantor*] paid as hereinbefore is mentioned, the receipt and payment of which said sum of —— pounds they the said [*grantor*] and [*christian name*] his wife, do hereby respectively acknowledge, and of and from the same, and every part thereof, they do hereby respectively acquit, release, and discharge the said [*grantee*], his executors, administrators, and assigns; [and out of which said sum of —— pounds the said [*grantor*] hath paid the sum of —— pounds —— shillings and —— pence to the said [*attornies*], for their bill of costs as hereinbefore is mentioned;] *She* the said [*wife, married name*], pursuant to, and by force and virtue, and in exercise and execution of the power or authority to her for this purpose given or reserved, in and by the hereinbefore in part recited indenture, bearing date on or about the —— day of ——, 18—, and all other powers or authorities to her given, limited, or reserved, in * her vested, or in anywise enabling her in this behalf, *doth* by this present writing,

Recital of warrant of attorney.

Testatum.

Appointment by grantor's wife of annuity of —— pounds during their joint lives, to trustee upon trusts herein after declared.

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(*d*) In the above instance, the grantor having no real estates, it was thought advisable not to enter up judgment, as the covenant for payment of the annuity being under seal, becomes a debt by specialty or special contract, which is classed next after debts of record, and takes precedence of simple contract debts. 2 Bla. Com. 465, 511. *Sed vide* 3 Geo. 4, c. 39, *post*.

When grantor has no real estates, sometimes judgment is not entered up.

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signed with her proper hand, [(*e*) and signed, sealed, and delivered by her the said [*wife, married name*], in the presence of, and attested by the two credible persons whose names are intended to be hereupon indorsed as witnesses attesting the signing, sealing, and delivery of these presents by the said [*wife, married name*]] direct and appoint, that the said [*annuitant*], his executors, administrators, and assigns, and such other trustee or trustees, as shall or may hereafter be nominated and appointed by the said [*grantor*] and [*wife, married name*] his wife, or either of them, in pursuance of the power for that purpose contained in the said indenture, bearing date on or about the —— day of ——, 18—, shall, at all times, during the joint lives of the said [*grantor*] and [*christian name*] his wife, pay the said annual sum of —— pounds, and all arrears and future payments which, from the day of the date of these presents, shall become due and payable in respect thereof, when and as the same shall be respectively had and received (after deducting the costs and charges which they or he may be put to in receiving the same), unto the said [*trustee for securing annuity*], his executors, administrators, and assigns, *Upon the trusts*, and for the intents and purposes hereinafter expressed and contained of and concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the above mentioned agreement on the part of the said [*grantor*] and [*christian name*] his wife, and for the considerations aforesaid, *They* the said [*grantor*] and [*christian name*] his wife, *have*, and each of them *hath* granted, bargained, sold, and assigned, and by these presents *do*, and each of them doth *grant*, bargain, sell, and assign unto the said [*trustee for securing annuity*], his executors, administrators, and assigns, ALL THAT the said annual sum of —— pounds (being the residue of the said annual sum of —— pounds, after deducting thereout the said annual sum of —— pounds appropriated to the separate use of the said *[*wife, married name*], as hereinbefore is mentioned); *And*

Second Testatum.

Assignment by grantor and his wife to trustee of

annuity of —— pounds to which they were entitled during their joint lives.

[*77]

(*e*) The part in crotchets not being required by the power, *ante*, 73, is unnecessary.

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the arrears and future payments to become due of the said annuity of —— pounds, from the day of the date of these presents: AND all powers and remedies for recovering and enforcing payment of the said annual sum of —— pounds: *Together* with full power and authority to ask, demand, sue for, recover, receive, and give effectual receipts and discharges for the said annuity of —— pounds, and every part thereof: AND all the right, title, interest, property, claim, and demand whatsoever of them the said [*grantor*] and [*christian name*] his wife, and each of them, both at law and in equity, of, in, to, from, or out of the premises hereinbefore assigned or expressed, and intended so to be, and every of them. TO HAVE, hold, receive, and take the annuity or yearly sum of —— pounds, and all and singular other the premises hereinbefore assigned or expressed and intended so to be, and every of them, and every part thereof, unto the said [*trustee*], his executors, administrators, and assigns, *Upon the trusts*, and for the intents and purposes hereinafter expressed and contained of and concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the above mentioned agreement on the part of the said [*grantor*] and [*christian name*] his wife, and for the considerations hereinbefore mentioned, they the said [*grantor*] and [*christian name*] his wife, *have*, and each of them *hath* granted, bargained, sold, and assigned; and by these presents *do*, and each of them *doth* grant, bargain, sell, and assign unto the said [*trustee*], his executors, administrators, and assigns, ALL THAT the said annuity or yearly sum of —— pounds, which the said [*wife, married name*], in case she should survive the said [*grantor*] (*f*), will become enti-

All powers, &c.

All the right, &c.

Habendum upon the trusts hereinafter declared.

Third Testatum.

Assignment by grantor and his wife, to trustee, of

annuity of —— pounds, to which wife will become entitled if she survive husband. (*Sed quære* their power to assign this contingent interest.)

[*78]

In equity, personal property limited to a married woman, in the event of her surviving

(*f*) The above deed was perused, settled, and approved by one of the most eminent conveyancers now living, "as calculated to make the best security which the nature of the property admits for the proposed annuity."

However, the third *testatum* cannot be followed as a precedent: for it is determined in equity that where a woman stipulates, in the event of **surviving her husband*, that her personal property shall become her own, reserving no power of disposition over it during the marriage;

†tled to receive, for the term of her life, as hereinbefore is mentioned and recited: And all powers and remedies for

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All powers, &c.

neither her husband can dispose of it by sale or otherwise, nor can she do so during his life, either by deed, will, consent, or charge. And the principle is the same when personal property is so given or left to her. 1 Rop. Husband and Wife, 247.

her husband, cannot be disposed of during the marriage.

Thus in the two cases of *Richards* v. *Chambers*, and *Seaman* v. *Duill*, 10 Ves. 580, by the first of which property was settled in trust for the sole and separate use of the wife for life, and if she survived her husband, then to be absolutely hers; but if she died in his life, then as she by deed or will should appoint; and in default of appointment, to her executors and administrators. There was a part of the property in Court in trust in this cause: the husband and wife applied by petition to have it transferred to them; she had executed an appointment in his favour, and having been examined *de bene esse*, had expressed her consent and desire that the prayer of the petition should be complied with. In the second case, the property was settled to the husband for life; and if he survived his wife, to him absolutely; but if she survived, then to her absolutely; they filed a bill, desiring that the whole should be paid to the husband. Sir William Grant, Master of the Rolls, said—"In these two causes I am called upon to determine the important and much agitated question, whether it is competent to a married woman, by examination in this court, to relinquish the provision secured by her marriage settlement, and to transfer to her husband that property to which he cannot make any claim, and over which she has not reserved any power of disposition. In the first case, the wife having a separate estate for life might, according to the doctrine of many cases, part with that life interest. *Chesslyn* v. *Smith*, 8 Ves. 183. She might also execute an appointment in favour of her husband, or of any person, which appointment, in the event of her death in his life, would be a valid and effectual disposition of the property. But the question in both cases is, whether the contingent interest which the wife while *sui juris* has secured to herself, in the event of her surviving her husband, can, through the interposition of this Court, be given up by her while in a state of coverture." And, after a clear and elaborate review of the conflicting authorities, he says, "it cannot be improper to inquire whether, upon principle, the jurisdiction that has been assumed in some of them can be supported. See how it stands. The wife, while *sui juris*, means to make a provision for herself, in the event of her surviving her husband; that is the case before the Court. Such are the terms upon which alone *she chooses to contract, while in a condition to exercise her [*79] free and unbiassed judgment. She wishes to put that out of her reach,

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recovering and compelling payment of the said last mentioned annuity or yearly sum of —— pounds; *Together*

and secure it from the effect of the influence and solicitation to which she may be afterwards exposed. She will be told, there is no way in which that can be better accomplished than that which has been adopted in these two cases—that the absence of power, the legal incapacity to act, is the best security. Why should a court of equity, professing to watch over the interests of married women, say, a woman about to marry shall not be allowed to secure to herself this kind of protection? She has it, if the Court will not interfere; she is deprived of it, if the Court, upon her consent while *coverte*, annuls the contract made for her benefit while *sui juris*. I do not know why this object should be aimed at, or upon what judicial principle the means by which it is carried into effect rest. The husband can have no claim of right to her interests, with his concurrence created for the benefit of the wife. In the particular cases before the Court, the interests are of such a nature that, if created by a third person, he would have no power over them: for he cannot affect her interest, which cannot take effect in possession during his life. This case is not like those in which the husband has a right to the trust property of his wife, subject only to an obligation to make some provision for her, before he reduces it into possession. When the wife, upon examination, consents to relinquish that equity, it is not by virtue of a disposing power in her, or by the intervention of the Court, that the property passes to the husband. His marital right is allowed to operate, unobstructed by the equity, which the wife does not oppose to it. The equity being out of the way, the right stands unqualified; and upon that the Court decrees. But here there is no pretence of right upon the part of the husband. As to the contingent interest, there is no power of disposition in the wife; on the contrary, the non-existence of such power is the ground for calling upon the Court. Then, without a right in the husband to call for a transfer, or a power in the wife to make it, what is the ground of the decree? Ordinarily, a decree, or judgment of a Court, does not pass the property, but merely declares the right, existing by antecedent title and disposition.

The only ground upon which it has ever been attempted to justify this juridiction, is analogy to a fine at law. But in what does that analogy consist? Fines and recoveries had their origin from real suits for the recovery of land. Though they are now merely modes of conveyance, the forms are still preserved, and the legal principles are kept entire; a title is asserted paramount to that of the married woman. Upon a fine, the existence of that title is recognized by an agreement after suit, and, upon a recovery, by judgment of the Court upon default

with full power and authority to ask, demand, sue for, recover, receive, and give effectual receipts and discharges

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[*80]

*of the party. An agreement upon suit had, like the *transactio* of the civil law, peculiar efficacy ascribed to it; and was not open to objections that would have been fatal to other agreements. Fines were always binding upon married women, though it was thought proper to make them liable to examination by the statute *De modo levandi Fines*;† but it was not merely by the examination that the fine had its efficacy.‡ The Court of Common Pleas could not, by the consent of a married woman upon examination, give effect to her conveyance by lease and release. It is upon certain technical principles, and under the cover of certain forms, that she is permitted to part with her estate, without a direct violation of the rule of law, denying her any disposing power. But the proceeding of this Court is not referable to any of those forms in annulling a settlement made before marriage. The Court exercises an arbitrary authority, giving to the acts of a married woman an effect that does not legally belong to them.

As my opinion therefore is, that there is no right in the husband to call for, or power in the wife to make a transfer, I cannot comply with either of these applications. Therefore the petition in the first cause and the bill in the second, must be dismissed." See also *Anderson* v. *Dawson*, 15 Ves. 538.

[And *à fortiori*, will not the Court allow a married woman, who has a contingent reversionary interest in a fund which is also settled to her separate use for life, *with a restraint on anticipation*, to part with her interest by consent *Ritchie* v. *Broadbent*, 2 Jac. & Walk. 456, and see *Jernegan* v. *Baxter*, 6 Madd. 32.]

At law the wife's *choses en action*, not reduced into possession by the husband, survive to her; so do her equitable interests of the same nature survive to her in equity. 9 Ves. 98. But in a court of equity the husband's assignments of his wife's reversionary equitable interests in the nature of *choses en action*, expectant on the decease of another person, will be binding against every person but his wife surviving him. See *dictum* of Sir Wm. Grant, 1 Ves. & Bea. 405. [Nor will his, or his and her assignment bind her right to an equitable provision in case they both survive the tenant for life.]

In equity the husband's assignment of his wife's *choses en action* will be binding against every person but his wife surviving him: but neither such assignment, nor his bankruptcy or insolvency, can affect her right to survivorship.

Thus where the wife was entitled to certain trust stock upon the death

† 18 Edw. I. c. 4.

‡ Hargr, n. Co. Litt. 121, a. *third.* 5 Cru. Dig. 201, 2nd ed. Ritso's Introduction to the Science of the Law, 204. *Sed vide contrà*, 2 Bla. Com. 355. Gilb. on Uses, 40, 244.

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for the said annuity of —— pounds (in case the same should become payable), and every part thereof: And all

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All the estate, &c.

of her mother, and she and her husband assigned it as a collateral security for the due payment of an annuity granted by him. In January, 1814, the husband took the benefit of the insolvent debtors' acts, under which he made a general assignment of his property. In February, 1814, the mother died, and a few days afterwards the husband died without having instituted any proceedings, or done any act to reduce the trust fund into possession, during the short interval between the mother's death and [*81] *his own. The wife, by joining in the assignment to the annuitant, could not affect her claim; for being a married woman, the deed was inoperative as to her; and the question was between the wife claiming by survivorship, and the grantee of the annuity, and the assignee under the insolvent debtors' acts, claiming under the husband. Sir Thomas Plumer, then Vice-Chancellor, said, independently of authority, let us consider upon principle, whether the husband's assignment of his wife's contingent interest is good? The husband has a right to his wife's *choses en action*, provided he reduce them into possession. Is a deed assigning a reversionary interest a reduction into possession? It is impossible actually to reduce a reversionary interest into possession. Is it then a constructive reduction into possession? The assignment puts the assignee of the husband in the same situation as the husband; and if the husband survive the wife, the assignee is entitled to the property: but here the husband died before the wife, and the assignee therefore is not entitled to the property. This is the manner in which this case strikes me upon principle. According to *Mitford* v. *Mitford*, 9 Ves. 87, it is clear that the general assignment in bankruptcy does not pass a reversionary interest in the wife, she surviving her husband. It must be the same as to the assignment under the insolvent debtors' act; nor do I see what answer can be given to the observation, that a particular assignee cannot be in a better situation than an assignee under the general assignment in bankruptcy. The case of *Wollands* v. *Crowcher*, 12 Ves. 174, is strong to show the insufficiency of the assignment to bar the wife's claim in case she survive her husband. On principle and authority, the wife is entitled to this money. *Hornsby* v. *Lee*, 2 Madd. Rep. 16. [And see *Wright* v. *Morley*, 11 Ves. 17; *Beresford* v. *Hobson*, 1 Madd. Rep. 373.]

The assignee is in the same situation as the husband.

A court of equity will not permit a married woman, by her consent, to pass to her husband her reversionary interest.

A court of equity will not permit the wife in these cases, by her consent, to pass her reversionary interest. Thus, where a testator gave personal estate to trustees in trust, to pay the interest to his wife for life, and after her death, to make equal division of the fund among his

the estate, right, title, interest, property, † claim, and demand whatsoever of them the said [*grantor*] and

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children, who should attain the ages of twenty-one years. He at his death left three children and his wife surviving him. The widow made a gift of her life interest to the husband of one of the children; and the widow, the husband, and his wife, petitioned that the reversionary interest of the wife who had attained twenty-one, should be paid to the husband, the wife and the widow consenting thereto. Sir John Leach, Vice-Chancellor, refused to make the order, and said, my opinion is, that a wife, by her consent in a court of equity, can only part with that interest which is the creature of a court of equity; the right which *she has in a court of equity to claim a provision by way of settlement on herself and children, out of that property which the husband would take in *possession* in her right. Her equity arises upon his legal right to present possession. This principle has no application to a remainder or reversion: when the remainder or reversion falls into possession, then the equity arises. If the wife by her consent could pass a remainder or reversion in personal property to the husband, she would not only part with a future possible equity, but with her chance of possessing the whole property by surviving her husband; and to give this effect to her consent, would make it analogous to a fine at law, with respect to real estate—a principle always disclaimed in a court of equity. A court of equity interferes to protect the property of the wife against the legal rights of the husband, and will never lend itself as an instrument to enable the husband to acquire a right in the wife's personal property, which he can by no means acquire at law. *Pickard* v. *Roberts*, 3 Madd. Rep. 384. [And see *Beresford* v. *Hobson*, 1 Madd. Rep. 373.]

band her reversionary interest.

[*82]

Where the wife was entitled to interest upon a share of money in the funds for her life, expectant upon the death of another person, the husband and wife agreed to sell this reversionary interest to the defendant, who objected to complete the purchase without the consent of the wife expressed in Court; upon which the husband and wife filed a bill for a specific performance. Sir William Grant, Master of the Rolls, expressed a doubt, whether this was a proper case for taking the consent. He said, the ordinary occasion for that is, where the husband applies to have paid to him money that belongs presently and immediately to his wife. Her equity is, not to prevent his receipt of it (for it belongs to him,) but to have a settlement; and the Court requires her consent to the payment to him without a settlement. But in this instance, the object is not to bar her equity to have a settlement, but to bar her right

A court of equity will only take the wife's consent *de bene esse*, to pass her reversionary interest in personal property, which by possibility may become payable during their marriage, to her husband's assignee for a valuable consideration, so as not to preclude her title by survivorship.

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[*christian name*] his wife, and each of them, both at law and in equity, of, in, to, from, or out of the said last men-

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by survivorship; for upon his death it belongs to her entirely. She is giving up not her equity only, but her entire right by survivorship. That is not the case in which the Court takes her consent. If the husband has a right to convey, let him exercise his right: but why this Court should join and aid him for that purpose, I do not know. And upon consideration, his Honour would only take the wife's consent *de bene esse*, so as not to preclude the question as to her title by survivorship, if it should arise on that event happening. *Wollands* v. *Crowcher*, 12 Ves. 174. [It seems that the Court would not now even take a wife's consent *de bene esse*, so as to preclude her right to an equitable provision in case she and her husband should both survive the tenant for life. This seems clear from the principle of the last cited case, and the above cited case of *Pickard* v. *Roberts*, 3 Madd. Rep. 384. The Court will not receive the consent of a feme covert to bar her equity until her share is ascertained. *Sperling* v. *Rochfort*, 8 Ves. 186; *Wollands* v. *Crowcher*, 12 Ves. 178; *Jernagan* v. *Baxter*, 6 Madd. 32. If the husband makes a settlement of an adequate part of the property on the wife and children, in case he and she should both survive the tenant for life, it seems that the Court would take the wife's consent, so as to preclude her right to an equitable provision in case she and her husband should both survive the tenant for life; *Gregg* v. *Crowcher*, cited 12 Ves. 175. And see *Wollands* v. *Crowcher*, 12 Ves. 177, 178, upon the principle, it seems, that a settlement being made of part of the fund, the husband is entitled to the rest, if he and his wife should both survive the tenant for life.—*Note by Mr. B.*] [See further as to the wife's right by survivorship to her equitable *choses en action*, and her equity to a settlement, *post*, Vol. 5, pp. 566, 573.]

At law the husband may release his wife's personal property which may accrue during the marriage; but not that which cannot so accrue.

The rule of law as to the wife's personal property appears to be, that where the wife has any right or duty, which by possibility may happen to accrue during the coverture, the husband may by *release* discharge it; but where the wife has a right or duty, which by no possibility can accrue to her during the coverture, the husband cannot release it. *Gage* v. *Acton*, 1 Salk. 326—7; Com. Rep. 70; 1 Lord Raym. 522, S. C. So, if a lease be made to husband and wife for the term of their lives, the remainder to the survivor of them for twenty-one years, and the husband grant away this term, and die, it shall not bar the wife; for she had only a possibility, and no interest. Co. Litt. 46, *b.*; 10 Co. 51, *a.*; Cro. Eliz. 841. And if the husband, before marriage, promise (*in writing*, agreeably to the 29 Car. II. c. 3, s, 4.), to leave his intended wife a certain sum of money at his death, or give a bond to his intended

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tioned annuity of —— pounds, and every part thereof. To HAVE, hold, receive, and take the said annuity or yearly sum of —— pounds, and all and singular other the premises lastly hereinbefore assigned or expressed, and intended so to be, and every of them, and every part thereof, unto the said [*trustee*], his executors, administrators, and assigns, *Upon the trusts*, and for the intents and purposes hereinafter expressed and contained of and concerning the same, that is to say; AND *it is hereby agreed and declared* between and by the said parties to these presents, that the said [*trustee*], his executors, administrators, and assigns, shall stand and be possessed of, and interested in, the said several annuities or yearly sums of —— pounds, —— pounds, and —— pounds, hereinbefore respectively directed to be paid, and assigned to him the said [*trustee*], his executors, administrators, and assigns, as hereinbefore mentioned, *Upon the trusts*, and for the intents and purposes hereinafter expressed and contained of and concerning the same, that is to say; UPON TRUST, that he the said [*trustee*], his

Habendum, upon trusts hereinafter declared.

Declaration that trustee shall stand possessed of annuities of —— pounds, —— pounds, and —— pounds.

Upon trust, in first place, during joint lives

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wife, with a condition to avoid it, if he leave her a certain sum of money at his death, the promise, *Smith* v. *Stafford*, Hob. 216; *Clark* v. *Thompson*, Cro. Jac. 571; or the obligation, *Gage* v. *Acton*, 1 Lord Raym. 515; *Milbourn* v. *Ewart*, 5 Durnf. and East, 381, 384, 386, would not be dissolved by their marriage; for the engagement never ripened into a duty during the husband's life, and it could not have been released by him. So where the defendant promised to pay a woman an annuity for her life, after the death of her intended husband, and the husband after the marriage released the defendant from all actions and demands on account of the annuity, the release was adjudged to be no bar; for being a promise to perform a payment after the death of the husband, it was not in demand during his life, nor by any possibility could ever be demanded by him. *Belcher* v. *Hudson*, Cro. Jac. 222. But if the wife had been possessed of or entitled to the residue of a term for years, upon the determination of an interest for years carved out of it; or if a sum of money had been payable to the wife, upon an event which might have happened during the marriage, her husband might have *assigned* the term, and *released* the money at law. 1 Rop. 239; 9 Ves. 98; 2 P. Wms. 608. [If the wife dies before the tenant for life, leaving her husband, he must administer to her, before he can assign or receive. See 2 Rop. Husb. & Wife, 75.]

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executors, administrators, and assigns, in the first place, do and shall, at all times during the joint lives of the said [*grantor*] and [*christian name*] his wife, by and out of the said annual sums of —— pounds, and —— pounds respectively, and in case the said [*wife, married name*] should survive the said [*grantor*], then after the decease of the said [*grantor*], in the lifetime of the said [*wife, married name*], do and shall, during the life of the said [*wife, married name*], by and out of the said annuity or yearly sum of —— pounds, to which the said [*wife, married name*], will, in the event of her surviving the said [*grantor*], become entitled, as hereinbefore is mentioned, retain to himself and themselves all such costs, charges, and expenses, as he or they may bear or sustain for or by reason of the trusts hereby reposed in him or them: And from and after full satisfaction and payment thereof, do and shall, yearly and every year, whilst the *said annuity or yearly sum of —— pounds shall continue payable to the said [*annuitant*], his executors, administrators, or assigns, pay and discharge the said annuity or yearly sum of —— pounds, to him the said [*annuitant*], his executors, administrators, or assigns, on or at the days or times, and in manner, on or in which the same shall become payable: And do and shall in the next place, during the life of the said [*wife, married name*], by and out of the said annuities of —— pounds, —— pounds, and —— pounds, as the same shall be respectively payable, pay and discharge to the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of —— pounds, by four equal quarterly payments in the year, that is to say; on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, without making any deduction or abatement out of the same for present or future taxes, or otherwise; and the first quarterly payment thereof to be made on the —— day of —— next ensuing the date of these presents: *And* if the said [*wife, married name*], should depart this life on any other day than one of the said quarterly days of payment, do and shall pay a proportional part of the said annuity or yearly sum of —— pounds to the said [*grantee*], his executors, admi-

of grantor and his wife, out of annuities of —— pounds, and —— pounds, and after death of wife in grantor's lifetime, out of annuity of —— pounds, to which she will then become entitled, to retain costs and expenses occasioned by the trusts:

and subject thereto, to pay annuity of —— pounds, previously granted;

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and subject thereto during wife's life to pay grantee's annuity of —— pounds by quarterly payments;

with a proportional part to her death;

nistrators, and assigns, for the time which she shall have lived of the then current quarter of a year: AND do and shall, during the joint lives of the said [*grantor*] and [*christian name*] his wife, pay all the surplus and residue which shall remain of the said annuities of —— pounds and —— pounds (after paying the said costs and expenses, and the said annuities of —— pounds and —— pounds), *Upon* and for such trust, intents and purposes as the said [*wife, married name*], shall from time to time, by any writing under her hand, direct and appoint; *And* in default of such direction and appointment, into the hands of said [*wife, married name*], to the end and intent that the same may be for the sole, separate, and peculiar use and benefit of the said [*wife, married name*] independently and exclusively of the said [*grantor*], and without being in anywise subject *or liable to his controul, debts, interference, or engagements; *And* the receipt or receipts of the said [*wife, married name*], or of the person or persons to whom she shall direct the said residue and surplus, or any part thereof, to be paid, shall be a good and effectual discharge, or good and effectual discharges, for the money therein mentioned and acknowledged to be received; AND in case the said [*grantor*] should depart this life in the lifetime of the said [*wife, married name*], then do and shall pay the residue and surplus which shall remain of the said annuity or yearly sum of —— pounds (after answering the several purposes aforesaid), unto the said [*wife, married name*], her executors, administrators, and assigns, for her and their proper use and benefit. AND THE SAID [*grantor*] and [*christian name*] his wife, do hereby, jointly, for themselves, their heirs, executors, and administrators, *And* each of them doth hereby separately, for himself and herself, his and her heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that they the said [*grantor*] and [*christian name*] his wife, or one of them, their, or one of their heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, and assigns, the said annuity or

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And subject thereto during joint lives of grantor and his wife, to pay surplus of annuities of —— pounds, and —— pounds, as wife shall by writing appoint; and in default of appointment, to her separate use;

[*86]

the receipts of wife and her appointees, to be good discharges:

if grantor die before his wife, to pay surplus of annuity of —— pounds to her.

Covenant by grantor and his wife, having a separate estate, jointly and severally to pay annuity.

GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

yearly sum of —— pounds, and also such proportional part thereof as aforesaid, clear of all deductions and reprisals whatsoever (or such part of the said annuity as shall not be repurchased in pursuance of the proviso hereinafter contained), as and when the same shall become due and payable, according to the true intent and meaning of these presents. And the said [*grantor*] and [*christian name*] his wife, do hereby jointly, for themselves, their heirs, executors, and administrators, *And* each of them doth hereby separately, for himself and herself, his and her heirs, executors, and administrators, covenant, promise, and agree with and to the said [*trustee*] and [*grantee*], and each of them, their, and each of their executors, administrators, and assigns, that the said several annuities of —— pounds, —— pounds, and —— pounds, respectively payable as aforesaid, are not *in anywise revoked, determined, or made void: And that by virtue of these presents, the same annuities respectively shall and may at all times hereafter, whilst the said annuity of —— pounds shall continue payable to the said [*grantee*], his executors, administrators, and assigns, be received by the said [*trustee*], his executors, administrators, or assigns, and be by him and them applied, upon the trusts, and for the intents and purposes hereinbefore mentioned, without any hindrance, molestation, or interruption by the said [*grantor*] and [*christian name*] his wife, or either of them, or any other person or persons whomsoever: And that he the said [*grantor*] and [*christian name*] his wife, or one of them, shall and will, within three calendar months next ensuing the date of these presents, purchase, redeem, or otherwise discharge and pay off, all annuities, debts, sum and sums of money, and other incumbrances, which now are legal or equitable charges or liens upon, or which in anywise affect the said several annuities of —— pounds, —— pounds, and —— pounds, or any of them, or any part thereof respectively (save and except the said annuity of —— pounds, payable to the said [*annuitant*], his executors, administrators, and assigns, during the life of the said [*wife, married name*], as hereinbefore is mentioned): And that they the said [*grantor*] and [*christian name*] his wife, or either of

Covenant by grantor and his wife having a separate estate, that annuities of —— pounds, —— pounds, and — pounds, are still subsisting;

[*87] and may be received by trustee during continuance of grantee's annuity, without interruption:

that grantor and his wife will within three calendar months, pay off all charges affecting annuities hereby appointed and assigned (except annuity of —— pounds previously granted;)

and will not, whilst grantee's annuity sub-

them, shall not at any time, whilst the said annuity of —— pounds, or any part thereof, shall continue payable to the said [*grantee*], his executors, administrators, or assigns, assign the said several annuities of —— pounds, —— pounds, and —— pounds, or any of them, or any part thereof respectively, to any person or persons whomsoever, or subject, charge, or make liable, the said several annuities, or any of them, or any part thereof respectively, with the payment of any annuity, sum or sums of money, or other expenses or incumbrances whatsoever: AND FURTHER, that he the said [*grantor*] and [*christian name*] his wife, and each of them, shall and will from time to time, and at all times hereafter, whilst the said annuity of —— pounds shall continue payable to the said [*grantee*], his executors, *administrators, and assigns, upon every reasonable request of the said [*trustee*], his executors, administrators, or assigns, or of the said [*grantee*], his executors, administrators, or assigns, but at the proper costs and charges of the said [*grantor*] and [*christian name*] his wife, or one of them, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable act and acts, deeds, devices, appointments, assignments, and assurances in the law whatsoever, for the further and better more perfectly and absolutely assigning, appointing, and assuring the said several annuities of —— pounds, —— pounds, and —— pounds, or any of them, or any part thereof respectively, unto the said [*trustee*], his executors, administrators, and assigns, upon the trusts, and for the intents and purposes, hereinbefore expressed and contained, of and concerning the same, and for enabling the said [*trustee*], his executors, administrators, and assigns, to carry the trusts hereby created into execution; *As* by the said [*trustee*], his executors, administrators, or assigns, or his or their counsel learned in the law, shall be reasonably advised, devised, or required. AND [THIS INDENTURE ALSO WITNESSETH, *and*] *it is hereby agreed and declared* between and by the said [*grantor*] and [*grantee*], that the said warrant of attorney, and the judgment to be entered up against the said [*grantor*] thereon, is intended and agreed to be a further security

GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

sists, assign or charge original annuities:

and for further assurance by grantor and his wife.

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Declaration that warrant of attorney is only intended as a further security.

GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

to the said [*grantee*], his executors, administrators, and assigns, for the said annuity or yearly sum of —— pounds hereinbefore mentioned: AND that no execution shall be issued or taken out upon such judgment, unless the said annuity or yearly sum of —— pounds, hereby secured, should be in arrear and unpaid for the space of forty days next after the same shall become due and payable: AND that in case the said annuity or yearly sum of —— pounds, or any part thereof, should be in arrear and unpaid for the space of forty days, then and in such case, and has often as the same shall happen, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, to sue out execution upon or by virtue of such judgment, as he or they shall think fit, [*89] *for the recovery of the arrears of the said annuity or yearly sum of —— pounds, and all costs, charges, damages, and expenses which he the said [*grantee*], his executors, administrators, or assigns, or any of them, shall bear, pay, sustain, or be put unto, for or by reason of the nonpayment thereof; *And* do and shall, by and out of the monies to be raised by the ways and means last hereinbefore mentioned, pay, satisfy, and discharge all the arrears of the said annuity or yearly sum of —— pounds, and all costs, charges, damages, and expenses, occasioned by the nonpayment thereof: *And* do and shall pay the residue or surplus of the money to be raised as last aforesaid, to the person or persons for the time being entitled thereto (*g*). AND [THIS INDENTURE ALSO WITNESSETH, and] the said [*grantee*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantor*] and [*christian name*] his wife, and their respective heirs, executors, and administrators, that in case the said [*grantor*] and [*christian name*] his wife, or either of them, or the heirs, executors, or administrators, of the [*grantor*], should at any time or times hereafter be minded or desirous of repurchasing the said annuity or yearly sum of —— pounds, or any part

No execution to be issued unless annuity be in arrear forty days:

if annuity be in arrear forty days, execution to be issued,

grantee thereby to pay annuity and all costs;

and to pay the residue of money raised to persons entitled thereto.

Covenant by grantee, that husband or wife may repurchase annuity, or any part, not less than a fifteenth, at a fixed sum

(*g*) As it was not intended in the above instance to enter judgment on the warrant of attorney, the usual provision to dispense with reviving the judgment was omitted.

GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

thereof, which shall be equal to, or exceed one fifteenth part thereof; and of such their, his, or her intention should give notice in writing to the said [*grantee*], his executors, administrators, and assigns, three calendar months before the —— day of —— in any year, then and in that case the said [*grantee*], his executors, administrators, or assigns, shall and will, on the said —— day of —— next succeeding the time of the delivery of such notice, on receiving [of and from the said [*grantor*] and [*christian name*] his wife or either of them, or the heirs, executors, or administrators of the said [*grantor*],] all sums of money whatsoever which shall be then due for or on account of the arrears of the said annuity or yearly sum of —— pounds, up *to the day of repurchasing the same, [*90] and all sums of money which shall be then due for or on account of any costs, charges, damages, or expenses, occasioned by the nonpayment of the said annuity, accept and take, for the repurchase thereof, the sum of —— pounds, or the sum of —— pounds for every fifteenth part of the said annuity of —— pounds, which the said [*grantor*] and [*christian name*] his wife, or either of them, or the heirs, executors, or administrators of the said [*grantor*], shall be so desirous of repurchasing as aforesaid; and so in proportion for any larger part of the said annuity than one fifteenth part: And the said [*grantee*], his executors, administrators, or assigns, shall and will thereupon, at the costs and charges of the person or persons requiring the same, release, assign, or otherwise dispose of the said annuity or yearly sum of —— pounds, or such part or parts thereof (not being less than one fifteenth part thereof) which shall be so repurchased: And shall and will, when the whole of the said annuity shall be so repurchased as aforesaid, acknowledge, or cause to be acknowledged, satisfaction on the record of the judgment, if any, that shall be entered up on the said warrant of attorney as aforesaid: And do every other act, deed, or thing, from time to time, necessary or advisable for the avoiding, releasing, assigning, vacating, and discharging the said annuity or yearly sum of —— pounds, or such part or parts thereof as shall be so repurchased as aforesaid; *As* by the said [*grantor*] and [*christian name*]

grantee thereupon to assign annuity or proportional part;

and when the whole is repurchased, acknowledge satisfaction on judgment.

GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

his wife, or either of them, their or either of their executors, administrators, or assigns, their, his, or her counsel learned in law, shall be reasonably advised, devised, or required; so that for the doing thereof the said [*grantee*], his executors, administrators, or assigns, or the said [*trustee*], his executors, administrators, or assigns, be not compelled or compellable to travel from his or their usual place or places of abode or dwelling. In WITNESS, &c.

[91]

GRANT BY ASSIGNMENT OF ANNUITY AND CONVEYANCE OF REMAINDER IN FEE UPON TRUSTS FOR SALE, &c.

GRANT *of an* ANNUITY *for ninety-nine Years, if three Nominees, any, or either of them, should so long live, secured by an* ASSIGNMENT *of an* ANNUITY *devised to the Grantor, and* CONVEYANCE *of a* REMAINDER *in Fee, expectant on an Estate for Life to a Trustee,* UPON TRUSTS, *to pay the Annuity granted by receiving the Annuity devised, and after default in Payment, by receiving the Rents and Profits of the Estate, or by selling or mortgaging the same: with* POWER TO REPURCHASE *at any time on giving Seven Days Notice.*

Parties.

THIS INDENTURE made the —— day of ——, in the year of our Lord 18— ; BETWEEN [*grantor*], of &c. of the first part [*grantee*], of, &c. of the second part, and [*trustee*], of, &c. of the third part. WHEREAS [*testator*], late of, &c. deceased, duly signed and published his last will and testament, bearing date on or about the —— day of ——, 18—, and did thereby, after other devises and bequests therein contained, give and devise unto his brother, the said [*grantor*], during the natural life of [*widow*], his the said testator's wife, who is still living, one annuity or clear yearly rent-charge of —— pounds, to be issuing and payable out of his the said testator's

Recital of a devise of an annuity to grantor for the life of testator's widow, charged on lands devised to the widow for her life;

GRANT BY ASSIGNMENT OF ANNUITY, AND CONVEYANCE OF REMAINDER IN FEE, UPON TRUSTS FOR SALE, &c.

manors, capital messuages, farms, and lands, within the parish of ——, in the said county of ——, by four equal quarterly payments, on the, &c. in every year, with powers of distress and entry on the premises, and perception of the rents and profits, in case default should be made in payment of the same annuity, or clear yearly rentcharge, as therein mentioned. *And* the said testator gave and devised his said manors unto his said wife, for the *term of her natural life; *And* after her decease, he gave unto the said [*grantor*], his manors, capital messuages, &c. given to his said wife during her life as therein mentioned; *To hold* the same unto the said [*grantor*], his heirs and assigns for ever. And whereas the said testator duly signed and published a codicil to his said will, bearing date on or about the —— day of —— 18—, and did thereby, after reciting that he had, previous to the date of the said codicil, borrowed of Messrs. ——, of, &c. the sum of —— hundred pounds, and had advanced the same to his brother, and that the said sum, with interest, was secured by his the said testator's bond, and that it was his intention that the said sum and the interest thereof, should altogether be paid by his brother [*grantor*], he the said testator therefore ordered and directed, that the said principal sum of —— hundred pounds, whether remaining due to Messrs. ——, at his the said testator's decease, or paid by him in any manner, should be a charge upon his said estate of, &c. and be paid by his said brother [*grantor*], or other person coming into the possession of the said estate, to the person or persons to whom such sum might be due at his the said testator's decease; and if paid off by him the said testator, then to his said wife, as his executrix: and that in case his said wife, or her representatives, should at any time after his decease be called upon to pay the said principal sum of —— hundred pounds, or the interest thereof, she or they should have full power and authority to repay herself and themselves out of the said annuity of —— pounds, given to his brother as aforesaid, and that the deficiency should be paid out of his estate at, &c. And whereas the said testator departed this life in or about the month of —— in the year 18—, without revoking his said will other than

[*92] and after her decease, devised to the grantor in fee.

Recital of a codicil, whereby testator charged grantor's reversion and annuity with the payment of a sum advanced to him.

Recital of testator's death without revoking his will and codicil.

GRANT BY ASSIGNMENT OF ANNUITY, AND CONVEYANCE OF REMAINDER IN FEE, UPON TRUSTS FOR SALE, &c.

and except by the said codicil, and also without revoking the said codicil. And whereas the said [*grantor*] hath agreed with the said [*grantee*], to grant to him, his executors, administrators, and assigns, a clear annuity or yearly sum of —— pounds for the term of ninety-nine years, if [*three nominees*] of, &c. or any or either of them should so long live; and the true and *bonâ fide* consideration to be advanced and given for the purchase of the said an-

Recital of contract for purchase of annuity for ninety-nine years, if either of three nominees should so long live.

*nuity is the sum of —— pounds. And whereas upon the treaty for the sale and purchase of the said annuity, it was agreed that the said annuity should be secured in the manner, and that the same might be repurchased upon the terms hereinafter mentioned: and that the costs and charges of preparing and perfecting the several securities for payment of the said annuity, and of preparing and filing the memorial thereof, should be borne and paid by the said [*grantor*]. Now this indenture witnesseth, that for and in consideration of the sum of —— pounds, in notes of the governor and company of the Bank of England, payable to the bearer on demand, to the said [*grantor*] paid by the said [*grantee*], immediately before the execution hereof, the receipt whereof he the said [*grantor*] doth hereby acknowledge, and of and from the same and every part thereof doth hereby acquit, release, and discharge the said [*grantee*], his executors, administrators, and assigns, he the said [*grantor*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, shall and will, from time to time, and at all times during the term of ninety-nine years, to be computed from the day of the date of these presents, and thence next ensuing, and fully to be complete and ended, if the said [*three nominees*], or any or either of them, should so long live, well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, and assigns, at or in the common Hall of Lincoln's Inn, in the county of Middlesex, *One* annuity or yearly sum of —— pounds of lawful money of Great Britain and Ireland, by equal quarterly payments, on the —— day of, &c. in every year, without any

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Recital of agreement on treaty.

Testatum.

Covenant to pay annuity for ninety-nine years, if either of three nominees should so long live;

GRANT BY ASSIGNMENT OF ANNUITY, AND CONVEYANCE OF REMAINDER IN FEE, UPON TRUSTS FOR SALE, &c.

deduction or abatement out of the same or any part thereof, on any account whatsoever, by authority of parliament or otherwise: *And* shall and will make the first payment of the said annuity of —— pounds on the —— day of —— now next ensuing, if the said [*three nominees*], or any or either of them, should be then living: and in case the survivor of them the said [*three nominees*], should die, during * the said term of ninety-nine years, and between or in the interval of any two of the said quarterly days of payment, and either before or after the said —— day of —— next, the said [*grantor*], his heirs, executors, or administrators, shall and will pay or cause to be paid to the said [*grantee*], his executors, administrators, and assigns, immediately after the decease of the survivor of the said [*three nominees*], and demand made thereof, such part of the said annuity of —— pounds as shall be in proportion to the time or number of days, which, inclusive of the day of the decease of such survivor as aforesaid, shall have elapsed prior to his decease, and after the day of payment immediately preceding that event, or as the case shall require, next after the day of the date of these presents. AND THIS INDENTURE ALSO WITNESSETH, that for the better securing the said annuity of —— pounds, hereby granted, or intended so to be, and for the consideration aforesaid, and in consideration of ten shillings of lawful mone aforesaid to the said [*grantor*] paid by the said [*trustee*] immediately before the execution hereof, the receipt whereof is hereby acknowledged, the said [*grantor*], on the nomination, and by the direction and appointment of the said [*grantee*], testified by his executing these presents, *hath* granted, bargained, sold, and assigned; *And* by these presents *doth* grant, bargain, sell, and assign unto the said [*trustee*], his executors, administrators, and assigns, ALL THAT the said annuity, or yearly rentcharge of —— pounds, by the said in part recited will of the said [*testator*], deceased, given or devised to the said [*grantor*] and his assigns, during the life of the said testator's wife, as hereinbefore is mentioned: and which shall henceforth become payable to him the said [*grantor*]: AND all powers and remedies for the recovering and forcing the payment of the said annuity: AND all the

with proportional part to survivor's death.

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Second Testatum.

Assignment to trustee of

annuity given by will.

All powers, &c.

All the right, &c.

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right, title, interest, trust, property, claim, and demand whatsoever, of the said [*grantor*], of, in, to, or out of the said annuity, or yearly rent-charge of —— pounds, and every part thereof. To HAVE, hold, receive, and take the said annuity or yearly rent-charge of —— pounds, and all and singular other the premises hereby assigned or intended so to be, and every part of the same, unto and by the said [*trustee*], his executors, administrators, and assigns, henceforth, for and during the term of one hundred years, in case the said [*grantor*] and [*widow*] should so long live; and in as full and ample a manner, to all intents and purposes, as he the said [*grantor*] can or may assign the same: AND with full power and authority to and for the said [*trustee*], his executors, administrators, and assigns, to ask, demand, sue for, recover, receive, and give effectual acquittances and discharges for the same, and every part thereof: *But nevertheless* UPON THE TRUSTS hereinafter mentioned, that is to say; UPON TRUST, that he the said [*trustee*], his executors, administrators, and assigns, do and shall receive and take the said annuity as and when the same shall be due; and do and shall deduct and retain out of the same, to and for himself and themselves, all costs, charges, and expenses of and attending the receipt or recovery thereof, or otherwise, in or about the execution of the trusts hereby declared; and do and shall in the next place pay to the said [*grantee*], his executors, administrators, and assigns, the said annuity or yearly sum of —— pounds, as and when the same shall become due, and all costs, charges, and expenses, if any, which he or they shall sustain, incur, or be put unto, by reason of the nonpayment, or in or about the recovery, and enforcing payment of the said annuity of —— pounds, or any part thereof: *And* subject and without prejudice as aforesaid, do and shall stand and be possessed of the said annuity or yearly rent-charge of —— pounds, hereby assigned or intended so to be, UPON TRUST for him the said [*grantor*], and for his executors, administrators, and assigns. AND THIS INDENTURE ALSO WITNESSETH, that for the considerations hereinbefore expressed, and also in consideration of ten shillings of like lawful money to the said [*grantor*] paid by the said [*trustee*], immediately before

Habendum:
[*95]

with power to receive, &c.

Upon trust, to receive annuity devised, and pay himself all costs:

and pay grantee annuity granted, and all his costs;

and subject thereto, in trust for grantor.

Third Testatum.

the execution hereof, the receipt whereof is hereby acknowledged, He the said [*grantor*], on the like nomination, and by the like direction of the said [*grantee*], testified as aforesaid, *hath* granted, bargained, sold, released, and confirmed; *And* by these presents *doth* grant, bargain, sell, release, and confirm unto the said [*trustee*] and his *heirs, (in him the said [*trustee*], now being vested by virtue of a bargain and sale (*a*) thereof made to him by the [*96]

GRANT AND ASSIGNMENT OF ANNUITY, AND CONVEYANCE OF REMAINDER IN FEE, UPON TRUSTS FOR SALE, &c.

Release of a remainder in fee to trustee.

(*a*) A bargain and sale for a year in the above instance is not strictly necessary, for the proper mode of conveying a reversion or a remainder, either expectant upon an estate for years, Litt. s. 567, or for life, Litt. 568, is by *grant* alone. 2 Bla. Com. 317, 2 Wooddes. Lec. 303. Watk. Princ. Conv. 60, 97. 2d ed. 109, 168, Pres. ed. 4 Cru. Dig. 63, Com. Dig. *Grant*, (C). However, reversions or remainders may be effectually conveyed by a bargain and sale for a year, and a release in enlargement, *Shortridge* v. *Lamplugh*, 2 Ld. Raym. 798, even though there should be an omission of the word *grant* in the release, which is often very unskilfully struck out of conveyances. Mr. Booth's opinion, 2 Cases and Opinions, 144, 148; *ante*, Vol. 1, 426. For a bargain and sale for years, by its own operation, and without enrolment, transfers an estate in reversion or remainder, Gilb. Uses, 104, 299, as well as an estate in possession, n. 9th ed. Noy's Maxims, 290, to the bargainee under the Statute of Uses, and therefore attornment in this case by the particular tenant in possession of the lands, was not requisite before the statute 4 Ann. c. 16, which made attornment unnecessary. Reversions or remainders may also be effectually conveyed by a grant for lives or years at common law, independently of the Statute of Uses, and a release in enlargement to the grantee, Gilb. Uses, 104, 299, without attornment by the particular tenant to the grant. See Butl. on Co. Litt. 301, b. (2).

A grant alone is sufficient to convey reversions or remainders; yet they may be conveyed by bargain and sale, and release,

or by grant for lives or years, and release.

A bargain and sale for a year, and a release in enlargement, is a common modern way of conveying reversions and remainders: Sug. n. Gilb. Uses, 232: for, as the validity of a grant would depend on evidence, that the grantor had merely a reversion or remainder, and consequently as it would be incumbent on the person claiming under the grant to show that there was a previous *existing estate*,—the bargain and sale for a year is taken as a precaution, to preclude that enquiry by creating a particular estate, capable of enlargement. 2 Pres. Conv. 235. Besides, if by means of the determination of the prior particular estate or of any defect in the creation of it, so that in fact there is not any estate in reversion or remainder in the person conveying, but merely

A bargain and sale, and a release, is the modern and prudent method of conveying reversions or remainders.

GRANT BY ASSIGNMENT OF ANNUITY, AND CONVEYANCE OF REMAINDER IN FEE, UPON TRUSTS FOR SALE, &c.

† said [*grantor*], in consideration of five shillings, by indenture bearing date on the day next before the day of

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an estate in possession, the bargain and sale, and release, provide for the event. Pres. Watk. Prin. Conv. 110. 168. 206. *Sed vide post*, Vol. 4, p. 732.

The reference in a release to a bargain and sale for a year of a reversion or remainder.

[*97]

It has been said, that it is an inaccuracy, in referring in a release to a bargain and sale for a year of a reversion or remainder, to say, that the *releasee is in the "*actual possession*" of the hereditaments; the right expression, it is said, is, that they are "*actually vested*" in him by virtue of the bargain and sale, and the Statute of Uses; But, n. Co. Litt. 270. a. (3); which mode of referring to the bargain and sale for a year, of a reversion or remainder, is, as in the above form, occasionally adopted in modern practice. It is quite immaterial which expression is used, for the word *possession* is as applicable, and as correct, as vested. The word "vested" having allusion to the symbolical inchoate form of delivering seisin of estates in possession, by the improper investiture of antiquity; by *investing* the tenant, or clothing him with a *robe* or vest;‡ Sullivan's Lecture, 59, 2d ed.: Kaim's Historical Law Tracts, 106, 3d ed. vol. 1. 151. ed. 1758; and it is so used in relation to a remainder or reversion, from the analogy a fixture of such property in the reversioner or remainder-man bears to that of the person so invested with an estate in possession, and not from any absolute propriety of expression. Watk. Des. 43, 3d ed. So when Mr. Fearne speaks of *vested* remainders, Fearne's Rem. 1, he only means that the property is fixed, or executed in the remainder-man, and not contingent. Robinson's Gavelkind, 172, 2d ed. The word *possession* was probably adopted by the old conveyancers in this instance, because it is applied in the Statute of Uses, 27 Hen. 8, c. 10, s. 1, as well to reversions and remainders as to lands in possession. Indeed, the word *possession* seems to be peculiarly appropriate; because in the language of the law, it is generally applied to an estate for year, or other chattel interest, in contradistinction to an estate of freehold; for if a man have a greater estate in lands than for years, the proper phrase is, that he is thereof *seised;* 2 Bla. Com. 105; Noy's Max. 20; Gilb. Uses, 79; Gilb. Ten. 183; but if he have an estate for years only, then he is said to be *possessed;* Lit. s. 324; Co. Litt. 230, b. not properly of the land,

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Vested.

‡ *Vestimento* is seisin, investiture; (from whence the Saxon term *vest;*) a metaphor the feudist took from clothing; by which they meant to intimate, "that the *naked possession was clothed with the solemnities of feudal tenure.*" 1 Burr. 102.

GRANT BY ASSIGNMENT OF ANNUITY, AND CONVEYANCE OF REMAINDER IN FEE, UPON TRUSTS FOR SALE, &c.

the date of these presents, for one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession,) ALL and singular the manors, capital messuages, farms, and lands hereinbefore mentioned, and which in and by the said will of the said [*testator*], deceased, were so as aforesaid devised to him the said [*grantor*], his heirs and assigns, from and after the decease of the said [*widow*], and every part and parcel of the same, with their and every of their rights, members, and appurtenances, *But nevertheless subject* to the said annuity or yearly rent-charge of [*annuity devised*] pounds, and the said powers and remedies for recovering and forcing the payment thereof; *and subject also* to the estate for life of the said [*widow*] therein; AND the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof, and of every part and parcel thereof; AND all the estate, right, title, interest, trust, property, claim, and demand whatsoever of him the said [*grantor*], in, to and out of the same premises, and every of them, and every or any part or parcel thereof. TO HAVE AND TO HOLD the said manors, capital messuages, farms, and lands hereby released, or intended so to be, with their and every of their

Reference to bargain and sale for a year of a remainder in fee.

Parcels.

Subject to annuity devised, and to widow's life estate.

Reversion, &c.

All the estate &c.

Habendum, to trustee in fee,

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but of the term for years; 2 Bla. Com. 144; Co. Lit. 46, b.; Watk. Desc. 109; but, nevertheless, the word *possession* is proper in relation to the freehold estate, as well as to the estate for years; Noy's Max. 120; Noy's Ten. 70. Supposing that neither of the above expressions "vested" and "possession," are strictly correct, as applied in the above instance, yet the word *possession* being equally effectual, is preferable to *vested;* because the bargain and sale is only taken *ex abundanti cautela,* to convey the reversion or remainder in the same manner as if it were an estate in possession, and not *as* a remainder or reversion; for as a remainder or reversion, a grant alone would be sufficient: and because it prevents a multiplicity of forms, and is the *old way* of referring to the bargain and sale for a year, in a release of a remainder or reversion, 3 Horsm. Conv. 277, as well as of an estate in possession; although even in the latter instance, the expression, that the grantee is in the *actual possession,* is not strictly correct, for the bargain and sale only gives the bargainee a *right* to the possession. But *via trita est tutissima.* 10 Co. 142, a.

GRANT BY ASSIGNMENT OF ANNUITY, AND CONVEYANCE OF REMAINDER IN FEE, UPON TRUSTS FOR SALE, &c.

rights, members, and appurtenances, unto the said [*trustee*], his heirs and assigns: To THE USE of the said [*trustee*], his heirs and assigns for ever: *But upon* and for the trusts, intents, and purposes *hereinafter mentioned. AND *it is hereby declared and agreed*, that the said [*trustee*], his heirs and assigns, shall be seised and possessed of the said manors and hereditaments, UPON TRUST, that in case and so often as the said annuity of —— pounds, or any quarterly payment, shall be in arrear and unpaid, in the whole or in part, by the space of forty days next after any or either of the days or times hereinbefore appointed for payment thereof, he the said [*trustee*], his heirs or assigns, do and shall from time to time, by and out of the rents and profits of the hereditaments, or by mortgaging or selling the same, or any part thereof, (such mortgage or mortgages to be made either in fee or for any term or number of years, and such mortgage or mortgages, sale or sales, to be made either in the lifetime or after the death of the said [*widow*],) or by all or any of the said ways or means, or by any other lawful and reasonable ways or means whatsoever, levy and raise such arrears of the said annuity of [*annuity granted*] pounds, together with all costs, charges, and expenses, occasioned by the nonpayment thereof, and the costs, charges, and expenses attending the execution of the trusts hereby declared: AND do and shall apply and dispose of the money to be so levied and raised, in payment and satisfaction of the said arrears, costs, charges, and expenses accordingly: AND do and shall permit and suffer such of the rents and profits of the said manors and other hereditaments, as shall from time to time remain after, or not be applied towards answering the purposes aforesaid, to be received by the said [*grantor*], his heirs or assigns, for his or their own use. AND *it is hereby provided, declared, and agreed*, that the person or persons who shall pay to the said [*trustee*], his heirs or assigns, all or any part of the rents and annual profits of the said manors and hereditaments, or advance any money upon any sale or sales, or the security of any mortgage or mortgages of the same hereditaments or any part thereof, or otherwise, pursuant to the trusts hereinbefore contained, shall not

to the use of trustee in fee;

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Upon trust, after default in paying annuity out of the rents and profits, or by mortgaging or selling premises, to raise arrears of annuity, and all costs;

and to permit grantor to receive residue of rents and profits.

Persons paying rents and profits, or purchase or mortgage money, to trustee, not to be answerable for misapplication.

GRANT BY ASSIGNMENT OF ANNUITY, AND CONVEYANCE OF REMAINDER IN FEE, UPON TRUSTS FOR SALE, &c.

be obliged to see to the application, or be answerable or accountable for the misapplication of the same, or any part thereof; and shall not be bound to ascertain or inquire whether the said annuity of [*annuity granted*] pounds, or any part *thereof, is in arrear or unpaid. And *it is hereby further agreed*, that after the determination of the said annuity, and full payment of the same and all arrears thereof, and all such costs, charges, and expenses as aforesaid, the said [*trustee*], his heirs or assigns, shall reconvey and assure the said manor and hereditaments hereby released, or intended so to be, or so much and such parts, if any, thereof, as shall not have been disposed of under the trusts aforesaid, unto and to the use of the said [*grantor*], his heirs or assigns, or as he or they shall in that behalf direct. And the said [*grantor*] doth hereby for himself and for his heirs, executors, and administrators, covenant, declare, and agree to and with the said [*trustee*], his heirs, executors, administrators, and assigns respectively, and also and separately to and with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], hath not, at any time or times heretofore, made, done, committed, or willingly or knowingly suffered any act, matter or thing whatsoever, whereby or wherewith, or by reason or means whereof, the said annuity or yearly rent-charge of [*annuity devised*] pounds hereby assigned, or intended so to be, or any part thereof, or the said manors and hereditaments hereby released, or intended so to be, or any part or parts thereof respectively, are, is, shall, or may be impeached, charged, incumbered, or in any way affected; And that the said [*grantor*], and his heirs, and all persons whosoever, lawfully or equitably claiming or to claim any estate, right, title, trust, charge, or interest, at law or in equity, of, in, to, or out of or upon, or in respect of the said annuity or yearly rent-charge of [*annuity devised*] pounds, or the said manors and other hereditaments, or any of them, or any part thereof (other than and except as to the said manors and hereditaments, as appears by the recitals hereinbefore contained), shall and will from time to time, and at all times hereafter, upon every reasonable request of the said [*trustee*], his

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After determination of annuity, and full payment of all arrears and costs, trustee to reconvey premises.

Covenant by grantor with trustee and grantee, that he has not incumbered annuity assigned, or remainder conveyed:

and for further assurance.

GRANT BY ASSIGNMENT OF ANNUITY, AND CONVEYANCE OF REMAINDER IN FEE, UPON TRUSTS FOR SALE, &c.

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heirs, executors, administrators, or assigns respectively, or of the said [*grantee*], his executors, administrators, or assigns, and at the costs and charges in all things of the said [*grantor*], his heirs or assigns, make, do, acknowledge, suffer, and execute, or cause and procure *to be made, done, acknowledged, suffered, and executed, all such further and other lawful and reasonable acts, deeds, assignments, conveyances, and assurances whatsoever for assigning or otherwise assuring the said annuity or yearly rent-charge of [*annuity devised*] pounds, and the powers and remedies for recovering and enforcing the payment thereof unto the said [*trustee*], his executors, administrators, and assigns, and for granting, releasing, and assuring the said manor and hereditaments unto and to the use of the said [*trustee*] his heirs and assigns for ever, upon the trusts and in manner aforesaid, according to the true intent and meaning of these presents; *As* by the said [*trustee*], his heirs, executors, administrators, or assigns, or the said [*grantee*], his executors, administrators, or assigns, or his or their, or any of their counsel in the law, shall or may be lawfully and reasonably advised, devised, or required, and be tendered to be made, done, or executed. PROVIDED ALWAYS *and it is hereby expressly declared and agreed*, that in case the said [*grantor*], his heirs, executors, administrators, or assigns, should at any time hereafter be desirous of repurchasing the said annuity of [*annuity granted*] pounds, and should give to the said [*grantee*], his executors, administrators, or assigns, seven days' notice in writing of such his or their desire, and upon the expiration of the said notice, or at any time afterwards, and upon giving seven days such notice as aforesaid, should well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, the sum of [*original purchase money, and half a year's annuity*] pounds, and all and every sums and sum of money which shall be then due and owing to the said [*grantee*], his executors, administrators, or assigns, for or on account of the said annuity of [*annuity granted*] pounds; and also a proportional part of the said annuity up to and inclusive of the day or time of paying the said sum of [*repurchase money*] pounds; and should

Power to repurchase at any time, on giving seven days' notice.

GRANT BY ASSIGNMENT OF ANNUITY, AND CONVEYANCE OF REMAINDER IN FEE, UPON TRUSTS FOR SALE, &c.

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also well and truly pay to the said [*trustee*], his executors, administrators, and assigns, all and every sums and sum of money which shall be then due to him or them for or on account of such costs, charges, and expenses as aforesaid, *Then* and in that case the said [*grantee*], his executors, *administrators, or assigns, shall and will accept and take the said sum of [*repurchase money*] pounds, as and for the price or repurchase, and in satisfaction and full discharge of the said annuity of [*annuity granted*] pounds; *And* the said [*trustee*], his heirs, executors, administrators, or assigns, shall or will assign or assure the said annuity of [*annuity devised*] pounds, and reconvey and assure the said manor and hereditaments hereby released, or intended so to be, or such parts thereof as shall not have been disposed of under the trusts aforesaid, unto the said [*grantor*], his heirs or assigns, or as he or they shall direct; *and* then and from thenceforth the several covenants, clauses, and agreements hereinbefore contained, for payment of the said annuity of [*annuity granted*] pounds shall absolutely cease. In witness, &c.

GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

*GRANT *of an* ANNUITY *for the Grantor's Life, secured by a* CHARGE *on Parcels mentioned in a Schedule, and on Lands to be purchased with Trust Stock, to both of which the Grantor is entitled under his Marriage Settlement, for his Life in Remainder, after a previous Life Estate; with* POWERS *of* DISTRESS *and* ENTRY *thereon, after the Determination of the previous Life Estate:* ASSIGNMENT *to a Trustee, of an* ANNUITY, *charged on the above-mentioned Property, and limited to the Grantor, for the joint Lives of himself and the previous Tenant for Life; and of the* DIVIDENDS *of Trust Monies, to which the Grantor is entitled for his Life, in remainder, after a previous Life Interest; and of the* DIVIDENDS *of Grantor's Wife's Portion, secured to Trustees by a Bond and Demise from her Father, and to which the Grantor is entitled in possession for his Life:* DEMISE *to the Trustee, of the Parcels mentioned in the Schedule, and the Lands to be purchased with the Trust Stock, for Ninety-nine Years, if the Grantor should so long Live, subject to the previous Life Estate:* COVENANT *to* SURRENDER *such parts of the Parcels mentioned in the Schedule as are of* COPYHOLD *Tenure, and of Copyholds which shall be purchased with Trust Stock, to the Use of the Trustee for the Grantor's Life, in remainder expectant on the previous Tenant for Life's Death, and subject to the Charges affecting the Grantor's Estate; upon Trusts, by reference to those declared of the demised Freeholds:* TRUSTS, *for securing the Annuity*

GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

**granted when in arrear forty Days, out of the Annuity and Dividends assigned, and of the Rents of the Hereditaments demised; or by Mortgage or Sale of the Annuity and Dividends assigned, and of the Hereditaments demised:* EXCEPTION, *in the Covenants for Title, of an Annuity previously granted:* COVENANTS *by Grantor to appear at* INSURANCE *Offices, and to pay additional Premiums; and not to consent to the Sale, Transfer, or Disposition of the Hereditaments demised, or of the Annuity and Dividends assigned, or of the Securities on which they shall be invested; or to the Removal or Nomination of Trustees without Grantee's Consent: with many other special Covenants, &c.; Proviso as to* JUDGMENT, *and Power to* REPURCHASE, *on giving one Month's Notice.*

THIS INDENTURE, [of three parts] made the —— day of —— [in the —— George the Fourth, &c. and] in the year 18—; BETWEEN [*grantor*], of, &c. of the first part, [*grantee*], of, &c. of the second part, and [*trustee*], of, &c. of the third part. WHEREAS, under and by virtue or means of the uses and trusts expressed and declared in and by an indenture [of seven parts] bearing date on or about the —— day of —— in the year 179 ; and made or expressed to be made between [*grantor's father*], of, &c. since deceased, and [*grantor's mother*], his wife, of the first part; the said [*grantor*] therein described to be the eldest son of the said [*father*], by the said [*mother*], his wife, of the second part; [*lady's father*], of, &c. of the third part; [*lady*], eldest daughter of the said [*her father*], by [——] his wife, of the fourth part; [*two trustees*], of, &c. of the fifth part; [*two other trustees*], of, &c. of the sixth part; and [*two other trustees*], of, &c. of the seventh part; being the settlement made previously to the marriage then intended to be, and which has since been solemnized, between the said [*grantor*] and [*wife by her maiden name*], *The* manors and freehold

Parties.

Recital of settlement on grantor's marriage;

whereby freehold lands were settled,

GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

*and copyhold messuages, farms, lands, and hereditaments, described in the schedule hereunder written, or hereunto annexed, now stand limited, settled, and assured, *To the use*, intent, and purpose, that the said [*grantor*] and his assigns, during the joint natural lives of the said [*grantor*], and the said [*his mother*], may have, receive, and take, by, from, and out of all and every the same freehold and copyhold hereditaments and premises, or any part thereof, *An* annuity, yearly rent-charge, or sum of [*annuity assigned*] pounds, of lawful money of Great Britain, free and clear of all taxes and deductions whatsoever, and to be paid, and payable, by four even and equal quarterly payments, on the days therein mentioned: with the usual powers of distress on the said manors and hereditaments, for the recovery of the said annuity, and every part thereof, in case any quarterly payment thereof should be in arrear by the space of thirty days after either of the days appointed for payment of the same; and also, the usual power of entry on the same manors and hereditaments, in case the said annuity, or any part thereof, should be in arrear by the space of sixty days after either of the same days of payment: *And subject* to the said annuity of [*annuity assigned*] pounds, and to the term, trust, powers, and remedies for recovering and enforcing the payment thereof, *To the use* of the said [*mother*] and her assigns, for and during the term of her natural life, without impeachment of or for any manner of waste; With remainder, *subject* to a term of —— years, and the trusts thereof, for raising —— thousand pounds, or, as the case shall require, —— thousand pounds, for the purposes therein mentioned, *To the use* of the said [*grantor*] and his assigns, for and during the term of his natural life, without impeachment of or for any manner of waste: With divers remainders over. And other lands and hereditaments, described in the said indenture, and which have been since sold, pursuant to the powers contained in the same indenture for that purpose, as hereinafter mentioned, were settled and assured *To* the same or the like uses, intents, and purposes, as are hereinbefore mentioned or recited concerning the said manors, messuages, farms, lands,

to the use that the grantor might during the joint lives of himself and his mother, receive thereout an annuity;

with powers of distress,

and entry:

and subject thereto,

to the use of the mother for life, without impeachment of waste:

with remainder subject to a term for raising younger children's portions.

to the use of grantor for life, without impeachment of waste.

And other lands, since sold under powers in the settlement, were settled,

to the same uses, &c.

GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

*tenements, and hereditaments, described in the schedule hereunder written, or hereunto annexed. And under, and by virtue, and in pursuance of the powers contained in the said indenture —— pounds, three per centum consolidated bank annuities, purchased with monies which arose from the sale of certain parts of the freehold and copyhold hereditaments which were comprised in the said indenture of settlement, and which were sold pursuant to the powers contained in the same indenture for that purpose, are now standing in the names of the said [*trustees of the fifth part*], in the books of the governor and company of the bank of England, *Upon trust*, to be reinvested in the purchase of other lands and hereditaments, to be settled to the same or the like uses, upon such or the same trusts, ends, intents, and purposes, as were declared in and by the said indenture of settlement, of the lands and hereditaments which have been sold: *And* the interest, dividends, and income, arising from the said bank annuities are in the mean time, until such lands and hereditaments shall be purchased, to be applied, and to go and be had, received, and taken, by such person or persons, upon such trusts, and for such ends, intents, and purposes respectively, and in such course, order, and manner, as the rents and profits of the lands and hereditaments so to be purchased therewith, would go and be payable, in case such purchase and settlement was or were actually made. And by the said indenture of settlement it was provided, and the said [*mother*] directed and appointed, that the heirs and assigns of the survivor of the trustees nominated and appointed in and by the thereinbefore recited will of [*mother's father*], esquire, bearing date the —— day of ——, 17—, (by which he gave and devised all and every his messuages, lands, tenements, and hereditaments whatsoever, with their appurtenances, in the county of —— to trustees therein named, and their heirs, *In trust* to and for the use and benefit of his youngest daughter [*tenant for life*], (since the wife of [——]) for her life; with remainder to trustees for her life, to support the contingent remainders; with remainder to her first and other sons successively in tail male; with remainder to her *daughters as tenants in common in tail general; with

And under powers in the settlement, —— pounds, 3 per cent. consols, purchased with monies arising from the sale of part of the lands, are now standing in the names of trustees.

Upon trust, to be reinvested in the purchase of other lands, to be settled to the same uses, &c. as were declared in the settlement of the lands sold;

and the interest of the stock, until the purchase of lands, to go to such persons as would be entitled to the rents of the lands.

And by the settlement grantor's mother directed the trustees of her father's will,

(whereby he devised all his messuages, &c. to trustees in fee,

in trust for his youngest daughter for life;

remainder to trustees to support contingent remainders;

remainder to her first and other sons in tail male; remainder to her daughters, as tenants in common in tail general;

GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

remainder to the use of the same trustees in fee,

upon trust for sale;

and to pay the money arising thereby unto grantor's mother and three other women, equally, to their separate use),

to sell the messuages, &c. in the event of the death of tenant for life without issue;

and pay the mother's fourth part of the monies to trustees,

upon trust, with the consent in writing of the mother and grantor, or the survivor, to invest the same in government or real securities, or in the stocks, in the trustees' names;

and to vary the securities, and pay the interest to the mother for life, for her separate use;

and after her decease, upon trust to pay the interest to grantor and his assigns for his life.

remainder to the use of the same trustees, their heirs and assigns, *Upon trust* for sale, as therein mentioned; and to pay, apply, and dispose of all the clear residue of the money arising by such sale, unto and amongst the testator's eldest daughter [ ], now the wife of [ ], his two nieces [ ], now the wife of [ ], and the said [*mother*], and his niece [ ], the daughter of his brother [ ], equally, share and share alike, and to and for their own sole and separate use, in manner therein mentioned) to sell and dispose of the said messuages, lands, tenements, hereditaments, and premises, in the county of [ ], in the event of the death of the said [*tenant for life*] without issue, as hereinbefore mentioned; and pay, assign, and transfer the one fourth part or share of her the said [*mother*], of and in the monies to arise from such sale, unto the said [*trustees of the fifth part*], their executors, administrators, and assigns, *Upon trust*, with the consent of the said [*mother*], and [*grantor*], or the survivor of them, testified by writing under their or his or her hands or hand, to invest the same in or upon government or real securities, or in some of the public stocks or funds, in the names of the said [*trustees of the fifth part*], or of the survivor of them, or the executors, administrators, or assigns of such survivor; and to alter the securities as therein mentioned; and from time to time pay to the said [*mother*], or permit and suffer, or duly authorize and empower her to receive the interest, dividends, and proceeds, of the said trust funds and securities for and during the term of her natural life, for her own sole and separate use: *And* from and immediately after her decease, *Upon trust* that they the said [*trustees of the fifth part*], and the survivor of them, and the executors, administrators, and assigns of such survivor, should, from time to time, pay to the said [*grantor*], or his assigns, or permit and suffer, or duly authorize and empower him or them to receive the interest, dividends, and proceeds of the said trust funds and securities, for and during the term of his natural life, to and for his and their own use and benefit. AND *under, and by virtue of further trusts, contained in the said indenture of settlement, the said [*grantor*] is also

And under trusts in the settlement, grantor is en-

entitled to receive the interest, which from time to time during his life shall become due and payable for the sum of [*lady's portion*] pounds: which was secured to be paid by the said [*lady's father*], his heirs, executors, or administrators, unto the said [*trustees of the sixth part*], their executors, administrators, or assigns, as trustees under the said indenture of settlement, by the bond of the said [*lady's father*], and also a certain indenture of demise, respectively bearing date on the day of the date of the said indenture of settlement: The indenture of demise being made or expressed to be made between the said [*lady's father*], of the one part, and the said [*trustees of the sixth part*], of the other part; being an indenture, by which the said [*lady's father*] demised unto the said [*trustees of the sixth part*], their executors, administrators, and assigns, *divers* hereditaments in the counties of —— and ——, *For* a term of one thousand years; *Subject* to redemption, on payment of the said sum of [*lady's portion*] pounds, and interest for the same at five pounds per centum per annum, at a day or at a time thereby appointed. And whereas the said [*grantor*] hath contracted and agreed with the said [*grantee*], to grant to him, his executors, administrators, and assigns, a clear annuity or yearly sum of —— hundred and —— pounds, for the (*a*) life of the said [*grantor*]: and the true and *bonâ fide* consideration to be advanced and given for the purchase of the said annuity, is the sum of [*purchase money*] pounds. And whereas, for securing the payment of the said annuity or yearly sum of —— hundred and —— * pounds, the said [*grantor*], hath by his bond or writing obligatory, under his hand and seal, bearing even date with these presents, become bound to the said [*grantee*],

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titled to receive the interest during his life of his wife's portion;

which was secured to trustees by her father's bond, and a demise from him to the trustees of divers hereditaments,

for 1000 years, subject to redemption on paying portion, with interest.

Recital of contract for purchasing an annuity for grantor's life.

Recital of bond for paying an annuity for grantor's life.

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(*a*) As the annuity hereby granted is charged on freehold property, it seems preferable, in order to avoid the question stated, *ante*, Vol. 1, 587, 596, whether a rent *pour autre vie* out of a freehold estate can be effectually limited to the grantee, his executors, administrators, and assigns, to limit the annuity,

To avoid the question, whether a rent *pour autre vie* can be limited to personal representatives, it seems preferable to grant it

"for and during the term of ninety-nine years, if the said [*grantor*] should so long live: and the true," &c. *ut supra.*

FOR YEARS DETERMINABLE ON DEATH.

GRANT CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

his executors, administrators, and assigns, in the sum of [*double the purchase money*] pounds: *Subject* to a condition for making the same bond void, on payment to the said [*grantee*], his executors, administrators, or assigns, of the said annuity or yearly sum of —— hundred and —— pounds during the (*b*) life of the said [*grantor*]; and a proportional part of the said annuity or yearly sum, in manner and at the times hereby appointed for payment of the annuity or yearly sum of —— hundred and —— pounds hereby granted or secured, or intended so to be: AND as a further security for payment of the said annuity or yearly sum of —— hundred and —— pounds, the said [*grantor*] hath by a writing under his hand and seal, also bearing even date with these presents, authorized [*attorney*] and [*another attorney*], attornies of his Majesty's Court of Common Pleas at Westminster, jointly and severally, or any other attorney of the said court, by confession or otherwise, to suffer judgment to be entered up against him in the said Court of Common Pleas, in an action of debt upon the said bond, at the suit of the said [*grantee*], for the sum of [*double the purchase money*] pounds, and costs of suit; and judgment is to be forthwith entered up against the said [*grantor*], under the authority of the said warrant of attorney: AND upon the treaty for the sale and purchase of the said annuity or yearly sum of —— hundred and —— pounds, it was agreed, that the same annuity or yearly sum should be further secured by the several charges, demises, and assignments, and also by the several provisions hereinafter contained: AND that the said annuity or yearly sum of —— hundred and —— pounds might be *re-purchased on the terms expressed in the agreement hereinafter contained in that behalf: AND it was also agreed, that the costs and charges of preparing and perfecting the several securities for payment of the said an-

Recital of warrant of attorney to confess judgment in an action of debt upon bond for securing an annuity.

Recital that annuity was to be further secured by the several charges, &c. hereinafter contained.

Recital that annuity might be repurchased.

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Recital that costs of securities and memorial were to be paid by grantor.

FOR YEARS DETERMINABLE ON DEATH.

(*b*) If for years determinable on the grantor's death, say,

"term of ninety-nine years, if the said [*grantor*] should so long live; and a proportional part," &c. *ut supra.*

See the form of a bond for collaterally securing an annuity for ninety years, if the grantor should so long live, Vol. 1, p. 499.

nuity, and of preparing and filing the memorial thereof, should be borne and paid by the said [*grantor*]. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of [*purchase money*] pounds (*c*) of lawful money of the united kingdom of Great Britain and Ireland, current in Great Britain, to the said [*grantor*] well and truly paid by the said [*grantee*], immediately before the execution of these presents; the receipt whereof the said [*grantor*] doth hereby acknowledge; and of and from the same, and every part thereof, doth by these presents acquit, release, and for ever discharge the said [*grantee*], his heirs, executors, administrators, and assigns, and every of them. *The* said [*grantor*] *Hath* given, granted, and confirmed, and by these presents *doth* give, grant, and confirm, unto the said [*grantee*], his executors, administrators, and assigns, ONE annuity, or clear yearly sum of —— hundred and —— pounds of lawful money of the united kingdom of Great Britain and Ireland, current in Great Britain; to be charged and chargeable upon, and issuing, payable, had, received, and taken from and out of ALL and singular the manors and freehold messuages, farms, lands, tenements, and hereditaments mentioned, comprised, and particularly described, in or by the schedule hereunder written, or hereunto annexed: AND ALSO upon, from, and out of, ALL and singular the messuages, lands, and hereditaments, which from time to time, and at any time hereafter, shall be purchased with the said sum of —— pounds three per centum consolidated Bank Annuities, or any part thereof, or the money to arise and be produced from the same Bank Annuities, or any part thereof, * pursuant to the powers contained in the hereinbefore mentioned indenture of settlement; *But subject* nevertheless, and without prejudice, to the life estate of

GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

First Testatum.

Consideration paid in money.

Grant of

annuity

charged on

parcels

mentioned in schedule;

and on lands to be purchased with trust stock;

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subject to grantor's mother's life estate:

(*c*) If it be the case, say,

"pounds, in notes of the Governor and Company of the Bank of England, [payable to the bearer on demand], to the said [*grantor*], well," &c. *ut supra.*

PAYMENT IN BANK OF ENGLAND NOTES.

[But this, though necessary to be stated in the *memorial*, may be omitted in the *deed*.]

GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

and on the remainder, &c. of the manors, &c. hereby charged.

Habendum of annuity for grantor's life;

payable quarterly;

without any deduction:

the said [*mother*] therein: AND ALSO upon, from, and out of, the reversion and reversions, remainder and remainders, yearly and other rents, profits, duties, suits, and services of the said manors, messuages, farms, lands, tenements and hereditaments, hereby charged or made chargeable with the payment of the said annuity or yearly sum of [*annuity granted*] pounds, and upon, from, and out of every part and parcel of the same, with their and every of their rights, royalties, members, and appurtenances. TO HAVE, hold, receive, take, and enjoy the said annuity, or yearly sum of [*annuity granted*] pounds, and every part thereof, unto the said [*grantee*], his executors, administrators, and assigns, henceforth, for and during the term of (*d*) the life of the said [*grantor*], The said annuity or yearly sum of —— hundred and —— pounds, to be payable and paid to the said [*grantee*], his executors, administrators, or assigns, at or in the common dining hall of the Inner Temple, London, upon the —— day of ——, the —— day of ——, the —— day of —— and the —— day of ——, in every year, for and during the (*e*) life of the said [*grantor*], between the hours of two and four in the afternoon of the same days respectively; without any deduction or abatement whatsoever out of the same, or any part thereof, for or in respect of any charges, taxes, assessments, or other matter, cause, or thing whatsoever, charged, taxed, assessed, or imposed, or at any time, and from time to time hereafter, to be taxed, charged, assessed, or imposed upon the said manors, messuages, farms, lands, tenements, and

[*112] *hereditaments, hereby charged therewith, or any part of the same, or upon the said [*grantee*], his executors, administrators, or assigns, for or in respect of the same, or any part thereof, or for or in respect of the said annuity or yearly sum of [*annuity granted*] pounds, or

FOR YEARS DETERMINABLE ON DEATH.

(*d*) If for years determinable on the grantor's death, say, "ninety-nine years, if the said [*grantor*] should so long live: The said annuity, &c." *ut supra.*

FOR YEARS DETERMINABLE ON DEATH.

(*e*) If for years determinable on the grantor's death, say, "term of ninety-nine years, if the said [*grantor*] should so long live, between the hours," &c. *ut supra.*

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any part thereof, by authority of parliament, or otherwise; the first payment of the said annuity or yearly sum of —— hundred and —— pounds, to become due and be made on the —— day of —— now next ensuing, provided the said [*grantor*] should be then living: and in case the said [*grantor*] should die between, or in the interval of any two of the said quarterly days of payment, and either before, or after the said —— day of next ——; then, such part of the said annuity or yearly sum of [*annuity granted*] pounds, as shall be in proportion to the time or number of days, which, inclusive of the day of the decease of the said [*grantor*] shall elapse prior to his decease, and after the day of payment next and immediately preceding that event; or as the case shall require, next after the day of the date of these presents; to be paid to the [*grantee*], his executors, administrators, or assigns, immediately after the decease of the said [*grantor*], and demand made thereof. And the said [*grantor*] doth hereby also grant unto the said [*grantee*], his executors, administrators, and assigns, that from time to time after the determination of the estate for life of the said [*mother*], when and as often as it shall happen, that the said annuity or yearly sum of [*annuity granted*] pounds, hereby granted, or intended so to be, or any part thereof, shall be in arrear and unpaid in the whole or in part, by the space of twenty-one days next over or after any of the days or times whereon the same is hereinbefore appointed to be paid as aforesaid; *Then*, and so often, and from time to time, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, into and upon the said manors, messuages, farms, lands, tenements, and hereditaments, hereby charged and made chargeable with the said annuity or yearly sum of [*annuity granted*] pounds; or into and upon any part thereof, to enter and distrain for the same annuity or *yearly sum, and all the arrears thereof: *And* the distress and distresses, then and there found, to detain, manage, sell and dispose of, in the same manner, in all respects, as distresses for rent reserved upon leases for years may or ought to be detained, managed, sold, and disposed of; and as if the said annuity or yearly sum of —— hundred

The first payment on, &c. if grantor be then living; with proportional part to his death.

Power of distress after the determination of a life estate.

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and —— pounds hereby granted, was a rent reserved upon a lease for years: *To the intent*, that the said [*grantee*], his executors, administrators, or assigns, shall or may thereby, therewith, or otherwise, be fully satisfied and paid the said annuity or yearly sum of [*annuity granted*] pounds, hereby granted, or intended so to be; and all the arrears thereof; and all costs, charges, and expenses, to be occasioned by the nonpayment thereof, at the days and times hereinbefore appointed for payment of the same. And the said [*grantor*] doth also grant unto the said [*grantee*], his executors, administrators, and assigns, that from time to time, after the determination of the estate of the said [*mother*], when, and as often as it shall happen, that the said annuity or yearly sum of [*annuity granted*] pounds, hereby granted, or intended so to be, or any part thereof, shall be in arrear and unpaid by the space of twenty-eight days, next over or after any one of the days whereon the same is hereinbefore appointed to be paid as aforesaid; *Then*, and from time to time, as often as it shall so happen, and either upon or at any time after the expiration of the said twenty-eight days, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, (although no legal or formal demand (*f*) should have been made of the said annuity or yearly sum of [*annuity granted*] pounds, hereby granted, or intended so to be,) into and upon the said manors, messuages, farms, lands, tenements, and hereditaments, hereby charged and made chargeable with the said annuity or yearly sum of [*annuity granted*] pounds; or into and upon any part thereof, in the name of the whole of the same, to enter: *And* the same hereditaments to have, hold, and enjoy; and the rents and profits thereof, and of every part thereof, to receive, and take *to and for his and their own use and benefit, until he and they shall thereby or therewith, or otherwise, be fully satisfied and paid, the said annuity or yearly sum of [*annuity granted*] pounds, hereby granted, or intended so to be; and all the arrears thereof; and also so much

Power of entry after the determination of a life estate.

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(*f*) *Vide ante*, p. 13, (*i*).

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of the same annuity or yearly sum of [*annuity granted*] pounds, as from time to time shall incur and grow due, during such time as the said [*grantee*], his executors, administrators, and assigns, shall continue in possession of the premises, after every such entry as aforesaid; and also all such costs, losses, charges, damages, and expenses, as shall be occasioned by nonpayment of the said annuity or yearly sum of [*annuity granted*] pounds, or any part thereof, at the days and times aforesaid: *And* such possession, when taken, to be without impeachment of waste (*g*) as far as the said [*grantor*] can grant that privilege. AND THIS INDENTURE FURTHER WITNESSETH, *Second Testatum.* that for further, better, and more effectually securing the said annuity or yearly sum of [*annuity granted*] pounds, hereby granted, or intended so to be; and for the considerations hereinbefore expressed; and also in consideration of ten shillings of lawful money current in Great Britain, to the said [*grantor*] paid by the said [*trustee*], immediately before the execution of these presents, the receipt whereof is hereby acknowledged; the said [*grantor*], on the nomination, and by the direction and appointment of the said [*grantee*], testified by his execution of these presents, *hath* bargained, sold, assigned, transferred, and set over; and by these presents, *doth* bargain, sell, assign, transfer, and set over unto the said [*trustee*], his executors, administrators, and assigns, ALL THAT the said annuity, yearly rent-charge, or annual sum of [*annuity assigned*] pounds, to which the said [*grantor*] is entitled for the joint lives of himself and the said [*mother*], under the uses or trusts of the said hereinbefore recited indenture of settlement: AND all and every sums and sum of money which from time to time shall become due and payable in respect of the said annuity or yearly rent-charge, or annual sum of [*annuity assigned*] pounds: AND ALSO, all and singular the dividends, interest, and *income, (if any) which from time to time, and at all times, after the decease of the said [*mother*], and thenceforth during the life of the said [*grantor*], shall become due and

Assignment by grantor, by direction of grantee, to trustee, of

annuity settled on grantor for the joint lives of himself and his mother:

and all sums to become due thereon:

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and also the dividends, which after grantor's mother's decease, shall become due to him for the share of the money from the sale directed by her to be made:

(*g*) *Vide* Vol. 1, p. 628.

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payable unto the said [*grantor*] for or in respect of the share of the said [*mother*], of the money which shall arise from the sale, which the said [*mother*] did, by the said indenture of settlement, as hereinbefore mentioned, direct to be made of the hereditaments heretofore of the said [*mother's father*] deceased; and also the dividends, interest, and income of the stocks, funds, and securities, in and upon which one fourth part of the same money, or any part thereof, shall at any time or times, and from time to time, be invested: And also all the dividends, interest and income which from time to time, and at all times, hereafter, during the life of the said [*grantor*], shall become due and payable in respect of the said sum of [*lady's portion*] pounds, secured to be paid by the said [*lady's father*], his executors, or administrators, unto the said [*trustees of the sixth part*] their executors, administrators, and assigns, as trustees, under the said hereinbefore mentioned indenture of settlement, by the said bond and indenture of demise or mortgage, entered into and made by the said [*lady's father*] as hereinbefore mentioned; and also the dividends, interest, and income of the stocks, funds, and securities, in, or upon which the said sum of [*lady's portion*] pounds, or any part thereof, shall from time to time, and at any time hereafter, during the life of the said [*grantor*], be laid out or invested: And all the right, title, interest, property, trust, benefit, claim, and demand whatsoever, at law and in equity, or otherwise howsoever, of him the said [*grantor*], of, in, to, or out of the said annuity, dividends, interest, and income hereby assigned, or otherwise assured, or intended so to be, and every part thereof. To have, hold, ask, demand, receive, and take the said annuity, yearly rent-charge, or annual sum of [*annuity assigned*], hereby assigned, or otherwise assured, or intended so to be, and every part thereof, unto the said [*trustee*], his executors, administrators, and assigns hence-, forth, during the joint lives of the said [*mother*] and [*grantor*], and for all other the estate, term, and interest, which the said [*grantor*] hath therein; and in as full, ample, and

[*116] *beneficial a manner, to all intents and purposes, as the said [*grantor*] can or may assign, or could or might have held and enjoyed the same, in case these presents had not

and the dividends of the securities upon which one-fourth of the money shall be invested;

and also the dividends which hereafter, during grantor's life, shall become due, for his wife's portion;

and the dividends of the securities on which grantor's wife's portion shall, during his life, be invested;

and all the right, &c. of grantor, in the annuity, dividends, &c. hereby assigned.

Habendum of annuity assigned to trustee, for joint lives of grantor and his mother.

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been made: AND TO HAVE, hold, ask, demand, receive, take, and enjoy the said dividends, interest, and income; and all and singular other the property, money, and effects hereby assigned, or otherwise assured, or intended so to be, and every part and parcel thereof, unto the said [*trustee*], his executors, administrators, and assigns, henceforth as his and their own money, property, and effects; and in as full, large, ample, and beneficial a manner, to all intents and purposes whatsoever, as he the said [*grantor*] can or may assign, or could or might have held and enjoyed the same, in case these presents had not been made: UPON THE TRUSTS *nevertheless*, and for the ends, intents, and purposes hereinafter mentioned, expressed, and declared, concerning the same. AND [for better and more effectually enabling the said [*trustee*], his executors, administrators, and assigns, to receive the said annuity, yearly rent-charge, or annual sum of [*annuity assigned*] pounds; and also the said dividends, interest, and income hereby assigned, or otherwise assured, or intended so to be, and every part thereof], the said [*grantor*] [*hath* made, ordained, constituted, and appointed, and by these presents] *doth* make, ordain, constitute, and appoint the said [*trustee*], his executors, administrators, and assigns, to be the true and lawful attorney and attornies of him the said [*grantor*], his executors and administrators, in the name or names of him the said [*grantor*], his executors, or administrators, or in the name or names of him the said [*trustee*], his executors, administrators, or assigns, to ask, demand, sue for, recover, and receive of and from the trustee or trustees for the time being of the said hereinbefore mentioned indenture of settlement, or any or either of them, or whom else it may concern, the said annuity of [*annuity assigned*] pounds, and also the said dividends, interest, and income hereby assigned, or otherwise assured, or intended so to be, and every part thereof: *And* on receipt thereof, or of any part thereof, to make, sign, seal execute, and deliver, good and sufficient receipts, releases, acquittances, or other discharges, for the whole or any *part of the said annuity of [*annuity assigned*] pounds, dividends, interest, and income; [*And*

Habendum of the dividends, &c. of the other property hereby assigned to trustee henceforth, in as full a manner as grantor can assign same:

upon the trusts, &c. hereinafter declared.

Power of attorney to trustee to receive annuity and dividends, &c.

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(*h*) without any obligation on the persons paying the same to see to the application thereof, or to be answerable for the misapplication or non-application of the same;] *And generally* to make, do, and execute any other act, deed, matter, or thing whatsoever, for the purpose of receiving and obtaining the payment of the said annuity of [*annuity assigned*] pounds, dividends, interest, and income hereby assigned, or otherwise assured or intended so to be: *And* one or more attorney or attornies under him or them, for all or any of the purposes aforesaid, for and in the name, and as the act and deed, or in the several names, and as the several acts and deeds, of him the said [*grantor*], his executors or administrators, to make, nominate, depute, and appoint; and at will and pleasure to revoke; and notwithstanding any such substitution, deputation, or appointment of another attorney or attornies under him the said [*trustee*], his executors, administrators, or assigns, to exercise and perform all or any of the powers and authorities hereinbefore expressed and contained, and given to him and them: AND the said [*grantor*] doth hereby give and grant unto the said [*trustee*], his executors, administrators, and assigns, and to his and their substitute and substitutes, the full and whole power and authority of him the said [*grantor*] over the premises; *And* doth hereby undertake to ratify, confirm, and allow to be valid and sufficiently effectual and available, to all intents and purposes whatsoever, all and whatsoever the said [*trustee*], his executors, administrators, or assigns, or his or their substitute or substitutes, shall lawfully do, or cause to be done, in or about the premises, by virtue of these presents.

Third Testatum. AND THIS INDENTURE FURTHER WITNESSETH, that for further, better, and more effectually securing the said annuity or yearly sum of [*annuity granted*] pounds, hereby granted, or intended so to be, and for the considerations hereinbefore expressed, and also in consideration of the further sum of ten shillings of lawful money current in Great Britain, to the said [*grantor*] well and truly paid by the said [*trustee*],

(*h*) The indemnity clause, *post*, pp. 122, 123, supersedes the necessity of inserting the part in crotchets.

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*immediately before the execution of these presents, the receipt whereof is hereby acknowledged; the said [*grantor*], on the nomination, and by the direction and appointment of the said [*grantee*], testified by his execution of these presents, *hath* granted, bargained, sold, leased, and demised; and by these presents *doth* grant, bargain, sell, lease, and demise unto the said [*trustee*], his executors, administrators, and assigns, ALL and singular the said manors and freehold messuages, farms, lands, tenements, and hereditaments, mentioned and comprised in and particularly described by the schedule hereunder written, or hereunto annexed: AND ALSO all and singular the said messuages, lands, and hereditaments, which from time to time, and at any time hereafter, shall be purchased with the said sum of —— pounds three per centum consolidated Bank Annuities, or any part thereof, or the money to arise and be produced from the same Bank Annuities, or any part thereof, pursuant to the powers contained in the said hereinbefore mentioned indenture of settlement, and every part and parcel of the same, with the appurtenances: AND the reversion and reversions, remainder and remainders, yearly and other rents, profits, duties, suits, and services of the same manors, lands, and hereditaments, and every part and parcel of the same, with their respective rights, royalties, members, and appurtenances. TO HAVE AND TO HOLD the said manors, messuages, farms, lands, tenements, hereditaments, and all and singular other the premises hereby granted or demised, or otherwise assured, or intended so to be, and every part and parcel of the same, with the appurtenancss, (*Subject* only to the life estate of the said [*mother*] as aforesaid,) unto the said [*trustee*], his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during and unto the full end and term of ninety-nine years thence next ensuing, and fully to be complete and ended, if the said [*grantor*] should so long live; without impeachment of or for any manner of waste, as far as the said [*grantor*] can grant that privilege: UPON THE TRUSTS *nevertheless*, and for the ends, intents, and purposes hereinafter expressed and declared concerning the same.

Demise by grantor, by direction of grantee, to trustee, of

parcels mentioned in schedule:

and lands to be purchased with trust stock;

and the reversion, &c.

Habendum,

(subject to grantor's mother's life estate)

to trustee for ninety-nine years, if grantor should so long live;

without impeachment of waste:

upon the trusts, &c. hereinafter declared.

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Reddendum to grantor, of one peppercorn. Covenant by grantor with trustee, to

surrender

such parts of parcels in schedule as are of copyhold or customary tenure;

and also of all the copyhold messuages, &c. which shall be purchased with trust stock;

to the use of trustee for grantor's life in remainder, and subject to charges;

to be held upon correspondent trusts, &c. with freehold hereditaments,

YIELDING AND PAYING, therefore, unto the said [*grantor*] * or his assigns, yearly and every year, during the said term of ninety-nine years hereby granted (determinable as aforesaid) the rent of one pepper-corn, if the same should be lawfully demanded. AND the said [*grantor*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustee*], his heirs and assigns, that he the said [*grantor*] shall or will, at his own costs and charges, on the request of the said [*trustee*], his executors, or administrators, at the next court or respective courts, to be held for the manor or respective manors of which the copyhold lands hereinafter described or referred to are parcel, or as soon after as conveniently may be, either in person or by attorney, surrender into the hands of the lord or lords, lady or ladies of the respective manors of which the said copyhold premises are held, ALL such, and so many, and such parts, as are of copyhold or customary tenure, of the said messuages, farms, lands, tenements, and hereditaments mentioned and comprised in and particularly described by the schedule hereunder written, or hereunto annexed; AND ALSO of all and singular the copyhold messuages, lands, and hereditaments, which from time to time, and at any time hereafter, shall be purchased with the said sum of —— pounds three per centum consolidated bank annuities, or any part thereof, or the money to arise and be produced from the same bank annuities, or any part thereof, pursuant to the powers contained in the hereinbefore mentioned indenture of settlement; TO THE USE of the said [*trustee*], his heirs and assigns, during the life of the said [*grantor*], in remainder after, and expectant on the death of the said [*mother*], and subject to the charges affecting the estate of the said [*grantor*]: *To be held* by him and them, UPON and for such trusts, intents, and purposes, as will correspond with the trusts, powers, intents, and purposes, which are hereinafter expressed and declared concerning the freehold hereditaments hereinbefore demised, for the said term of ninety-nine years, determinable as aforesaid, or as near thereto as the nature and quality of the tenure of the said copyhold premises, and the usage and customs of manors, of which the same re-

spectively are holden, will admit. *To the intent* that the *said copyhold parts of the said messuages, farms, lands, tenements, and hereditaments, may be charged and chargeable with the payment of the said annuity or yearly sum of [*annuity granted*] pounds hereby granted, or intended so to be, and the proportional part thereof: AND that, in the mean time, until such surrender shall be past and perfected, he the said [*grantor*], and his heirs, shall and will stand possessed of and interested in the said copyhold or customary premises, with the appurtenances, *In trust*, to surrender the same, in manner and for the purposes aforesaid. AND *it is hereby declared and agreed* by and between all the said parties to these presents, that the said annuity of [*annuity assigned*] pounds, and the dividends, interest, and income, hereby assigned, or otherwise assured, or intended so to be; and also the said term of ninety-nine years determinable as aforesaid, hereby granted or demised to the said [*trustee*], his executors, administrators, and assigns, are respectively assigned and granted or demised to him and them, UPON TRUST for better securing to the said [*grantee*], his executors, administrators, and assigns, the due and regular payment of the said annuity or yearly sum of [*annuity granted*] pounds, hereby granted or secured to him and them [and such proportional part thereof] aforesaid: AND UPON TRUST, that in case, and when and as often as the said annuity or yearly sum of [*annuity granted*] pounds, or any quarterly payment thereof, shall be in arrear and unpaid, in the whole or in part, by the space of forty days next after any one of the days or times hereinbefore appointed for payment thereof, then and from time to time, as often as it shall so happen, the said [*trustee*], his executors, administrators, or assigns, do and shall, by and out of the said annuity of [*annuity assigned*] pounds, and the dividends, interest, and income, hereby assigned or otherwise assured, or intended so to be; and also by and out of the rents and profits of the said hereditaments and premises, hereby granted or demised or otherwise assured, or intended so to be; or by mortgage or sale of the said annuity of [*annuity assigned*] pounds, dividends, interest, and income, and of the said heredita-

to the intent, that the copyhold, &c. may be charged with annuity.

Covenant, that until surrender perfected, grantor will stand possessed of copyholds in trust.

Trusts of annuity, &c. assigned.

Upon trust for better securing to grantee the due payment of annuity granted.

And upon trust, when annuity shall be in arrear forty days,

out of annuity and dividends assigned;

and of rents of hereditaments demised;

or by mortgage or sale of the annuity and dividends assigned,

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ments hereby demised, or of a competent part thereof, for all or any part of the said term of ninety-nine years, de-*terminable as aforesaid; or by bringing actions against, or making distresses upon all, and every or any one or more of the present or future tenants of the said hereditaments and premises, for recovery of the rents then in arrear; or by making entries upon the same hereditaments and premises; or by all and every, or any one or more of the said ways and means; or by any other lawful and reasonable ways and means whatsoever, levy and raise such arrears of the said annuity or yearly sum of [*annuity granted*] pounds, as from time to time shall become due, and remain unpaid; together with all such costs, charges, damages and expenses, as the said [*grantee*], his executors, administrators, or assigns, shall incur, expend, sustain, or be put unto, by reason of the non-payment of the said annuity, or yearly sum of [*annuity granted*] pounds, or any part thereof; together with the costs, charges, and expenses, attending the execution of the trusts hereby created: AND UPON THIS FURTHER TRUST, that the said [*trustee*], his executors, administrators, or assigns, do and shall, in the first place, retain to and reimburse unto and for himself and themselves the costs, charges, and expenses of and attending the execution of the trusts hereby reposed in him and them; *And* in the next place pay and satisfy the said [*grantee*], his executors, administrators, and assigns, all the arrears of the said annuity or yearly sum of [*annuity granted*] pounds; and all costs, charges, damages, and expenses which he and they shall have incurred, suffered, borne, sustained, and laid out, by reason and on account of the non-payment of the said annuity or yearly sum of [*annuity granted*] pounds, or any part thereof, or in or about recovering or enforcing the payment of the same: AND UPON THIS FURTHER TRUST, that in the mean time, and until the said annuity or yearly sum of [*annuity granted*] pounds, or some quarterly payment thereof, shall be in arrear or unpaid, in the whole or in part, by the space of forty days next after some or one of the times hereby appointed for payment of the same; and also from time to time when, and as often as all arrears of the said annuity or yearly sum of [*annuity granted*] pounds

and of the hereditaments demised:

or by bringing actions against, or making distresses upon, the tenants of the hereditaments for recovering the rents in arrear,

or by making entries on the hereditaments,

or by all or any of the said ways,

or by any other lawful ways,

raise the arrears of annuity granted,

with grantee's costs and damages by reason of the non-payment;

and trustee's costs:

And upon trust, in the first place to retain the costs of executing the trusts;

and in the next place, to pay the arrears of the annuity granted;

and all costs and damages by reason of the non-payment:

And upon trusts, until annuity granted shall be in arrear forty days;

and also when the arrears, costs, and damages shall be paid,

and the said costs, charges, damages, and expenses, shall be *raised or fully satisfied and paid the said [*trustee*], his executors, administrators, and assigns, do and shall permit and suffer the said [*grantor*], or his assigns to receive and take the said annuity of [*annuity assigned*] pounds, and also the said dividends, interest and income, hereby assigned, or otherwise assured, or intended so to be, and every part thereof; and also to receive and take the rents and profits, of the said hereditaments and premises hereby demised, or intended so to be, to and for his and their own use and benefit, without any interruption, hindrance, or denial of, from, or by him the said [*trustee*], his executors, administrators, or assigns: AND UPON THIS FURTHER TRUST, that the said [*trustee*], his executors, administrators, and assigns, do and shall from time to time, after paying the said annuity or yearly sum of [*annuity granted*] pounds, when and as the same shall become due and payble; and also after paying, deducting, and retaining such costs, charges, damages, and expenses as aforesaid, pay to the said [*grantor*] or his assigns, or to whom he or they shall direct and appoint, the money (if any) which from time to time, shall remain in the hands of the said [*trustee*], his executors, administrators, or assigns, unapplied to any of the purposes aforesaid. AND *it is hereby provided, declared, and agreed* by and between the said [*grantor*], and [*grantee*], and they do hereby severally direct and appoint, that the person or persons who shall pay to the said [*trustee*], his executors, administrators, or assigns, all or any part of the said annuity of [*annuity assigned*] pounds, or of the dividends, interest, and income, hereby assigned or otherwise assured or intended so to be, or the rents and annual profits of the said manors, messuages, farms, lands, tenements, and hereditaments, hereby granted and demised or otherwise assured or intended so to be, or advance any money upon any sale or sales, or on the security of any mortgage or mortgages of the same annuity of [*annuity assigned*] pounds, dividends, interest, and income, hereditaments, and premises, or any part thereof, or otherwise pursuant to the trusts hereinbefore contained, shall not be obliged or required to see to the application of the said annuity of [*annuity assigned*] pounds, divi-

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to permit grantor to receive the annuity and dividends assigned;

and the rents of the hereditaments demised:

And upon trust, after paying annuity granted;

and after paying and retaining costs and damages,

to pay the surplus money to grantor.

Indemnity clause to persons paying to trustee annuity or dividends assigned,

or rents of hereditaments demised,

or advancing money upon sale or mortgage of annuity, dividends, and hereditaments,

from seeing to the application thereof;

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dends, interest, *and income, rents, profits, and money respectively, or any of them; or be answerable or accountable for the misapplication or nonapplication of the same, or any part thereof: And that all receipts which shall be given by the said [*trustee*], his executors, administrators, or assigns, for all or any part of the said annuity of [*annuity assigned*] pounds, dividends, interest, and income, rents, profits, and monies respectively, shall be good and sufficient acquittances and discharges for the sum or sums of money, which by the said receipts, and every of them, shall be acknowledged or expressed to be, or to have been received. And the said [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, or some or one of them, shall or will, from time to time, well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or asssigns, the said annuity or yearly sum of [*annuity granted*] pounds hereby granted, or intended so to be, and also such proportional part thereof as aforesaid, free and clear of and from all taxes, charges, rates, and other deductions whatsoever, parliamentary or otherwise, at the days and times, and in manner and form hereinbefore expressed, limited, and appointed, for payment thereof, and according to the true intent and meaning of these presents: And also, that (subject to the life estate of the said [*mother*] as aforesaid) he the said [*grantor*], now at the time of the sealing and delivery of these presents, hath in himself good right or full power, and lawful and absolute authority, to subject and charge all the said manors, messuages, farms, lands, tenements, and hereditaments, hereby charged or made chargeable with the said annuity or yearly sum of [*annuity granted*] pounds hereby granted, with the appurtenances, during the life of him the said [*grantor*], to and with the payment of the same annuity or yearly sum of [*annuity granted*] pounds, and the powers and remedies hereby given for compelling and enforcing the payment thereof; *and also* to assign the said annuity of [*annuity assigned*] pounds, and also the

or being answerable for the misapplication thereof:

and trustee's receipts to be sufficient discharges.

Covenant by grantor to pay an annuity for his life:

and that, subject to a previous life estate, grantor has good right to charge the hereditaments with the annuity granted;

to assign annuity and dividends assigned;

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said dividends, interest, and income hereby assigned, or *otherwise assured, or intended so to be; *and also* to demise the said manors, messuages, farms, lands, tenements, and hereditaments, with the appurtenances, for the said term of ninety-nine years, determinable as aforesaid; *and also* to surrender the said copyhold hereditaments, hereby covenanted to be surrendered unto the said [*trustee*], his heirs, executors, administrators, and assigns, upon the trusts, and for the purposes aforesaid, and according to the true intent and meaning of these presents: AND ALSO, that the said annuity of [*annuity assigned*] pounds, dividends, interest, and income, hereby assigned or otherwise assured, or intended so to be, and also the said manors, messuages, farms, lands, tenements, and hereditaments, hereby charged or made chargeable with the said annuity or yearly sum of [*annuity granted*] pounds, hereby granted, or intended so to be, and also demised and covenanted to be surrendered as aforesaid, now are free from all charges and incumbrances whatsoever, at any time heretofore done, committed, imposed or suffered by the said [*grantor*], or any person or persons claiming, or to claim, by, from, under, or in trust for him (an annuity or yearly sum of [*annuity previously granted*] pounds, granted by the said [*grantor*], for his life, to [*prior annuitant*], of, &c. by an indenture, bearing date on or about the —— day of ——, 18—, subject to be repurchased on the terms in the same indenture expressed; and the charges mentioned in the said indenture of settlement only excepted): AND ALSO that he the said [*grantor*] shall and will, at his own costs and charges, at any time hereafter, when thereunto requested by the said [*grantee*], his executors, administrators, or assigns, personally attend at the Pelican Life Insurance office, or any other office of insurance in London or Westminster, or before an agent or agents in the country, of such office or offices, and produce such vouchers and certificates as such office or offices shall require, for the purpose and to the end that a policy of insurance may be obtained, by and at the expense of the said [*grantee*], his executors, administrators, or assigns, on the life of the said [*grantor*]: AND FURTHER, that he the said [*grantor*] shall not nor will, at any

to demise hereditaments;

and to surrender copyholds to trustee, upon the trusts aforesaid;

and that annuity and dividends assigned and hereditaments charged and demised, are free from incumbrances,

(an annuity previously granted,

and certain other charges only excepted): and that grantor will appear at insurance office

and not go on the seas without giving grantee notice thereof;

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time during the continuance of the said annuity hereby granted, go on the seas, or in parts beyond the seas, without giving to the said [*grantee*], his executors, administrators, or assigns, as early notice thereof as may be: And in that case the said [*grantee*], his executors, administrators, or assigns should have previously insured, or should insure, any sum or sums of money not exceeding [*purchase money*] pounds, on the life of the said [*grantor*], and should pay an additional rate of insurance by reason of the said [*grantor*] going on the seas, or beyond the seas, *Then* for or in respect of so much time as the said [*grantor*] shall go on the seas, or be in parts beyond the seas, and the said [*grantee*], his executors, administrators, or assigns, shall pay any additional premium or premiums of insurance, he the said [*grantor*], his heirs, executors, or administrators, shall or will well and truly reimburse, satisfy, and pay to the said [*grantee*], his executors, administrators and assigns, such sum, and all such sums of money, as the said [*grantee*], his executors, administrators, and assigns, shall pay, as and for an additional premium or premiums, in respect of the said [*grantor*] going upon or being beyond the seas: And that all and every such sum or sums of money shall be charged and chargeable upon the said annuity of [*annuity assigned*] pounds, dividends, interest and income, hereby assigned or otherwise assured, or intended so to be; and also upon the said term of ninety-nine years, hereby granted, determinable as aforesaid, and copyhold hereditaments hereby covenanted to be surrendered; and be raisable under and by virtue of the trusts hereby declared of the same annuity of [*annuity assigned*] pounds, dividends, interest, and income, and of the said term and copyhold hereditaments; and also under and by virtue of the said warrant of attorney, bearing even date with these presents, and the judgment to be entered up under the authority of the same warrant of attorney: [And also, that he the said [*grantor*] shall not nor will do any act, deed, matter, or thing, whereby any policy or policies of assurance, for any sum or sums not exceeding [*purchase money*] pounds, effected or to be effected on his life by the said [*grantee*], his executors, administrators, or assigns, shall or may be

and that if grantee should pay any additional premium by reason thereof;

then grantee shall pay additional premium

grantor will repay the same.

And that such sums shall be charged on annuity, &c. assigned;

and be raisable under the trusts hereby declared;

and also under judgment;

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rendered void.] AND FURTHER, that he the said [*grantor*] will not, at any time or times hereafter, while the said annuity or yearly sum of [*annuity granted*] pounds hereby granted, or intended so to be, shall continue payable to the said [*grantee*], his executors, administrators, and assigns, consent to the sale, transfer, or disposition of all or any of the said hereditaments hereby charged and demised, and covenanted to be surrendered; or of the said annuity of [*annuity assigned*] pounds, divi-*dends, interest, and income hereby assigned or otherwise assured, or intended so to be; or of the stocks, funds, or securities in or upon which the same, or any part thereof, shall from time to time be invested; or to the removal or dismission of any trustee or trustees in whom or in whose name or names, either solely and alone, or jointly with any other person or persons, the said trust monies, stocks, funds, or securities, are or shall be placed or invested; or to the nomination of any new trustee or trustees of the said trust monies, stocks, funds, and securities, without the consent of the said [*grantee*], his executors, administrators, or assigns thereunto, in writing under his or their hand or hands, first had and obtained (*a*); *Nor* without such consent as aforesaid, or the order, judgment, or decree of some court of law or equity, for that purpose, revoke or countermand all or any of the powers and authorities, hereinbefore contained and given to the said [*trustee*], his executors, administrators and assigns: AND ALSO, that in case all or any part of the said sum of [*stock*] pounds three per centum consolidated Bank Annuities, or the said sum of [*lady's portion*] pounds, due on the bond and mortgage of the said [*lady's father*], as hereinbefore mentioned, or the produce of the same, or any part thereof, should during the continuance of the said annuity or yearly sum of [*annuity granted*] pounds, hereby granted, or intended so to be, be invested in the purchase of real estates: *Then* such real estates, instead of being limited to, or to the use of the said [*grantor*] for his life, shall, in the first place, be limited to the use of the said [*trustee*], his exe-

and that grantor will not, during continuance of annuity granted

consent to the sale, transfer, or disposition of the hereditaments demised,

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or of the annuity and dividends assigned,

or of the securities on which they shall be invested;

or to the removal of trustees,

or to the nomination of new trustees, without grantee's consent;

nor revoke any of the powers hereby given to trustee;

and that if trust stock or wife's portion should be invested in the purchase of real estates;

such real estates shall in the first place be limited to trustee for ninety-nine years, determinable on grantor's decease,

[(*a*) As to the effect of an alienation by a tenant for life upon these powers, *vide post*, Vol. 5, p. 562.]

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cutors, administrators, and assigns, for the term of ninety-nine years, determinable on the decease of the said [*grantor*], upon, under, or subject to the same or the like trusts, as are hereinbefore declared of and concerning the hereditaments hereby demised, or intended so to be, for the said term of ninety-nine years, determinable as aforesaid; so that the same may be an effectual security for the said annuity of [*annuity granted*] pounds hereby granted, or intended so to be, during the continuance thereof: AND MOREOVER, that he the said [*grantor*] and his assigns, and all and every other persons and person whosoever, lawfully claiming, or to claim, by, from, under, or in trust

upon the like trusts as are hereinbefore declared of the hereditaments hereby demised;

[*127] *for him, shall and will at any time or times, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said [*grantee*], his executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts and act, deeds and deed, assurances and assurance in the law whatsoever, for further, better, more perfectly, lawfully, and absolutely or satisfactorily granting and assuring the said annuity or yearly sum of [*annuity granted*] pounds hereby granted, or intended so to be, with such powers and remedies as aforesaid, unto the said [*grantee*], his executors, administrators, and assigns, for the life of the said [*grantor*], in manner aforesaid; and also for assigning or otherwise assuring the said annuity of [*annuity assigned*] pounds, dividends, interest and income, hereby assigned or otherwise assured, or intended so to be; and for demising or otherwise assuring the said manors, messuages, farms, lands, tenements, and hereditaments hereby charged and demised or otherwise assured, or intended so to be, and every part of the same, with the appurtenances for all the then residue of the said term of ninety-nine years, determinable as aforesaid: and also for surrendering the said copyhold hereditaments, hereby covenanted to be surrendered, unto the said [*trustee*], his heirs, executors, administrators and assigns, or unto such other person or persons as the said [*grantee*], his executors administrators or assigns, shall direct or appoint, upon the trusts, and for the ends, intents, and purposes aforesaid, and ac-

and for further assurance

of annuity granted

unto grantee,

and of annuity and dividends, assigned,

and of hereditaments charged and demised,

for the residue of determinable term,

and of copyholds covenanted to be surrendered

unto trustee,

upon the trusts aforesaid,

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cording to the true intent and meaning of these presents; *As* by the said [*grantee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised or advised and required, and be tendered to be made, done, and executed. AND *it is hereby agreed and declared* by and between the said [*grantor*] and [*grantee*] [that the said bond and warrant of attorney, and the judgment to be entered up under and by virtue of the said warrant of attorney, and also these presents, are respectively given, and to be entered up, in consideration of one and the same sum of [*purchase money*] pounds, and not in consideration of several sums of [*purchase money*] *pounds; and for securing one and the same annuity or yearly sum of [*annuity granted*] pounds, and not for securing several annuities or yearly sums of [*annuity granted*] pounds: AND] that no execution or executions shall be issued or taken out upon the judgment to be entered up as aforesaid, unless or until the whole or a part of some quarterly payment of the said annuity or yearly sum of [*annuity granted*] pounds, shall be in arrear by the space of sixty days: AND that from time to time, and at all times hereafter, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, to sue out and prosecute one or more writ or writs of execution upon the said judgment, without reviving the same, although and notwithstanding there should not have been any former proceeding upon the said judgment or there should not have been any proceedings within one year next and immediately preceding the teste or issuing of such writ or writs: AND that the said [*grantor*], his heirs, executors, administrators, or assigns, shall not, nor will have, receive, or take any plea, exception, proceedings, or other benefit, from the omission of the said [*grantee*], his executors, administrators, or assigns, to revive the said judgment, or proceed under the same from year to year, and within the space of every year. AND *it is hereby declared and agreed* by and between the said [*grantor*] and [*grantee*], that after the decease of the said [*grantor*], and full payment to the said [*grantee*], his executors, administrators, and assigns, of the said annuity or yearly sum of [*annuity granted*] pounds here-

as by grantee or his counsel shall be required.

Declaration that securities are given in consideration of one and the same sum,

and for securing one and the same annuity;

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and that no execution shall be issued on judgment, until some quarterly payment shall be in arrear;

and that it shall not be necessary to revive judgment;

and that grantor will not take advantage of omission to revive judgment.

Declaration that after grantor's decease, and full payment of annuity granted,

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by granted, and all arrears thereof, up to the day of the decease of the said [*grantor*]; and of all such costs, charges, damages, and expenses as aforesaid, the said [*grantee*], his executors, administrators, and assigns, shall and will, on the request and at the costs and charges of the heirs, executors, administrators, or assigns of the said [*grantor*], acknowledge satisfaction upon the record or records of the said judgment, in due form of law; or do any further or other act, matter, or thing, which may be reasonably required, for releasing and extinguishing all right and remedy under the said judgment, and all executions thereupon; *So* as for doing thereof the said [*grantee*], his executors, administrators, or assigns, shall not be

and of all costs and damages,

grantee will acknowledge satisfaction on judgment, &c.

[*129] *compelled, or compellable, to travel from the place or place of his or their then residence or abode. PROVIDED ALWAYS, *and it is hereby expressly declared and agreed* by and between the said [*grantor*] and [*grantee*], and it is the true intent and meaning of them, and of these presents, that in case the said [*grantor*], or his assigns should at any time hereafter be desirous of repurchasing the said annuity or yearly sum of [*annuity granted*] pounds hereby granted, and should give to the said [*grantee*], his executors, administrators, or assigns, one calendar month's notice, in writing, of such his or their desire; and upon the expiration of the said notice, or at any time afterwards, and upon giving one calendar month's such notice as aforesaid, should well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, the sum of [*original purchase money, and generally in addition a quarter of a year's annuity*] pounds; and also all and every sums and sum of money which shall be then due and owing to the said [*grantee*], his executors, administrators, or assigns, for or on account of the said annuity or yearly sum of [*annuity granted*] pounds; and also a proportional part of the said annuity or yearly sum, up to and inclusive of the day or time of paying the said sum of [*original purchase money, &c.*] pounds; and should also well and truly pay, or cause to be paid, unto the said [*trustee*], his heirs, executors, administrators, and assigns, all and every sums and sum of money which shall be then due to the said [*trustee*], his heirs, executors, administra-

Proviso enabling grantor to repurchase annuity granted,

on giving one month's notice,

and paying original purchase money, and all arrears of annuity granted,

and a proportional part to the time of repurchase;

and on paying trustee's costs.

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tors, or assigns, for or on account of such costs, charges, and expenses, as shall have been advanced, paid, or incurred by him or them in the execution of the trusts hereby reposed in him and them, or in or about recovering or enforcing the payment of the said annuity or yearly sum of [*annuity granted*] pounds hereby granted, when in arrear; *Then*, and in that case, the said [*grantee*], his executors, administrators, and assigns, shall or will accept and take the said sum of [*original purchase money, &c.*] pounds, as and for the price of repurchase, and in satisfaction and full discharge of the said annuity or yearly sum of [*annuity granted*] pounds: *And* the said [*grantee*], his executors, administrators, and assigns, on the request, and at the *costs and charges of the said [*grantor*] or his assigns, shall or will deliver up the said bond, or writing obligatory, to be cancelled, and acknowledge satisfaction upon the record of the said judgment, and release the said annuity or yearly sum of [*annuity granted*] pounds hereby granted; *And* the said [*trustee*], his heirs, executors, administrators, and assigns, subject, and without prejudice, to any such sales or mortgages as aforesaid, shall or will reassign to the said [*grantor*] or his assigns the said annuity of [*annuity assigned*] pounds, dividends, interest, and income hereby assigned or otherwise assured, or intended so to be; and surrender to the said [*grantor*] or his assigns the said manors, messuages, farms, lands, tenements, and hereditaments hereby demised, or intended so to be; and also resurrender to the said [*grantor*] or his assigns the said copyhold hereditaments hereby covenanted to be surrendered, in case the same should have been surrendered in the mean time: *Or* otherwise, and at the option of the said [*grantor*], or his assigns, the said [*grantee*], his executors, administrators, and assigns, shall or will assign, transfer, and set over the said bond and warrant of attorney and judgment (if any); And the said [*trustee*], his heirs, executors, administrators, and assigns, shall or will assign the said annuity of [*annuity assigned*] pounds, dividends, interest, and income, hereby assigned or otherwise assured, or intended so to be; and also the said manors, messuages, farms, lands, tenements, and hereditaments hereby demised, or intended so to be; and surren-

On repurchase, bond to be cancelled;

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and acknowledge satisfaction on judgment, and release annuity granted;

and trustee, subject to sales or mortgages, to reassign to grantor annuity and dividends assigned,

and surrender to grantor hereditaments demised,

and resurrender to grantor copyholds;

or otherwise at the option of grantor,

grantee to assign bond, warrant of attorney, and judgment;

and trustee to assign annuity and dividends assigned,

and hereditaments demised, &c. as grantor shall appoint;

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der the said copyhold hereditaments hereby covenanted to be surrendered, in case the same should have been previously surrendered, unto such person or persons as the said [*grantor*] or his assigns shall direct or appoint; and upon such trusts, and for such purposes, as he or they shall declare of and concerning the same: *And then* and thenceforth the several covenants and agreements hereinbefore contained for payment of the said annuity or yearly sum of [*annuity granted*] pounds hereby granted: and also for surrendering the said copyhold hereditaments, unless previously surrendered, shall be void and of no effect. IN WITNESS, &c.

and thenceforth covenants to be void.

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*THE SCHEDULE

REFERRED TO IN THE ABOVE WRITTEN INDENTURE.

Schedule of parcels.

ALL THAT, &c. *(ending as follows;)* AND ALL OTHER the manors, messuages, lands, tithes, and estates, late of said [*father*], deceased, or of any person or persons in trust for him, in the said county of ——, and which were comprised in the said hereinbefore mentioned indenture of settlement, *except* the parts thereof only, which have been since sold under the powers contained in the same indenture of settlement for that purpose.

And all other manors, &c. of grantor's father, comprised in settlement.

GRANT AND CHARGE ON MARRIED WOMAN'S SEPARATE ESTATE.

*GRANT *of an* ANNUITY *for Sixty Years, if a Married Woman should so long live, secured by the Grantor's Covenant, and a* CHARGE *by the Married Woman, on the Rents of an Estate settled to her separate Use for Life* (*a*)*: Covenants respecting* INSURANCES *on her life; and* POWER *for either of them to* REPURCHASE. A short Form.

THIS INDENTURE, made the —— day of ——, 18—; BETWEEN [*grantor*], of, &c. of the first part; [*married woman who charges her separate estate with payment of the annuity*], wife of [ ], of, &c. of the second part; and [*grantee*], of, &c. of the third part; WITNESSETH, that for and in consideration of the sum of [*purchase money*] pounds, of lawful money of Great Britain and Ireland, to the said [*grantor*] paid by the said [*grantee*], at or immediately before the execution hereof, at the request of the said [*married woman*], the receipt whereof he the said [*grantor*] doth hereby ac-

Parties.

Testatum.

[(*a*) As to the power of alienation of a *feme coverte* over her separate estate, *vide post*, Vol. 6. A married woman who has charged her separate estate to secure an annuity granted by her husband, may file a bill to avoid the grant for a defect in the memorial, without offering to return the consideration money; for as she has no power to bind herself by contract, but only a power of *disposition*, she is not liable in respect of such property to those equities, which arise out of contract and general engagement; *Aguilar* v. *Aguilar*, 5 Madd. 414. See also *Jones* v. *Harris*, 9 Ves. 486. It was also decided in *Aguilar* v. *Aguilar*, that where property of the husband, and property also of the wife, were charged with an annuity granted by the husband, who subsequently charged his own property with further annuities, and took the benefit of the Insolvent Debtors' Act, the wife was entitled as against the assignee, and also against the subsequent annuitants, to have the husband's property first applied.]

Married woman may avoid annuity without returning consideration money.

GRANT AND CHARGE ON MARRIED WOMAN'S SEPARATE ESTATE.

knowledge, and therefrom doth hereby acquit the said [*grantee*], the same being in full, for the purchase of the annuity hereby granted: *He* the said [*grantor*] *hath* granted, bargained, sold and confirmed, *And* by these presents, *doth* grant, bargain, sell, and confirm unto the said [*grantee*], his executors, administrators, and assigns, *One* annuity, or clear yearly sum of [*annuity*] pounds, of lawful money aforesaid, free and clear of and from all taxes and deductions whatsoever. To HAVE, hold, receive, take, and enjoy the said annuity or clear yearly sum of [*annuity*] pounds, unto the said [*grantee*], his executors, administrators, and assigns, henceforth for and during the term of sixty years, if the * said [*married woman*] should so long live, to be payable and paid by four even and equal payments, on the, &c. in every year; the first payment thereof to be made on the —— day of —— now next ensuing; and also a proportional part of the said annuity, in the event of the decease of the said [*married woman*] between any of the said quarterly days of payment, to be paid immediately after such decease. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and also in consideration of five shillings of like lawful money to the said [*married woman*] paid by the said [*grantee*], at or immediately before the execution hereof, the receipt whereof is hereby acknowledged; and in consideration also that it was at the time of the contract for the purchase of the annuity hereby granted, agreed that the same should be secured in manner hereinafter expressed; *She* the said [*married woman*], as being a married woman having a separate estate, *doth* hereby grant, declare, and agree, that the said annuity, and all costs, charges, and expenses which shall or may, from time to time, reasonably be incurred in and about recovering and compelling payment thereof; and all sums of money which shall or may become due for or in respect of extra premiums of insurance or otherwise, under or by virtue of these presents, shall henceforth be a charge upon and be issuing and payable by and out of ALL and singular the rents, issues, and profits of *All that* capital messuage or tenement, situate, &c. *Which* messuage or tenement and premises were by in-

Grant of an annuity.

Habendum for sixty years, if nominee should so long live;

[*133] payable quarterly,

with proportional part to nominee's death.

Further Testatum.

Charge by a woman having a separate estate, of annuity, costs, and extra insurance,

upon rents of parcels,

purchased by

dentures of lease and release, bearing date on or about the —— and —— days of ——, 18—, conveyed by [A. B.] and [C. D.] to [*devisor*], the late husband of the said [*married woman,*] and to [*trustee to prevent dower*], as his trustee; and by the said [*devisor*], by his last will and testament, bearing date on or about the —— day of ——, 18—, and proved in the Prerogative Court of the Archbishop of Canterbury, on the —— day of ——, 18—, were devised unto and to the use of [*trustee*], esquire, and the said [*trustee to prevent dower*], and their heirs, during the life of his wife the said [*married woman*], then [*widow name*], upon trust, during her life, to pay the rents, issues, and profits thereof, to his said *wife, to her separate use, notwithstanding any future coverture: And further, that the said [*trustees*] and their heirs shall henceforth stand, remain, and be seised of, and interested in, the capital messuage or tenement and premises so devised, and the rents, issues, and profits thereof; during the said term of sixty years, determinable as aforesaid, *In trust*, in the first place, to pay the said annuity and all costs, charges, and expenses, and extra premiums of insurance, as aforesaid; and subject thereto, *In trust* for the said [*married woman*], according to the trusts of the said will. And the said [*grantor*], doth hereby for himself, his heirs, executors, and administrators, covenant, promise, grant, and agree to and with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, the said annuity of [*annuity*] pounds, of lawful money, aforesaid, during the said term of sixty years, determinable as aforesaid, and the said proportional part, immediately on the expiration of forty days from and after the respective days and times hereinbefore limited and appointed for paying the same, unless the said annuity should previously have been paid by or out of the rents, issues, and profits aforesaid, and without any deductions or abatement whatsoever: And also, that the said [*married name*] shall not, nor will, do any act or thing, whereby or by means whereof any such policy or policies of insurance as may, or shall

GRANT AND CHARGE ON MARRIED WOMAN'S SEPARATE ESTATE.

her late husband,

and by him devised to trustees during her life, upon trust, to pay the rents to her separate use;

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and direction that the trustees shall stand possessed thereof during determinable term,

in trust, to pay the annuity, costs, and extra insurance; and subject thereto, in trust for married woman, according to trusts of will.

Covenant by grantor for paying annuity during determinable term, and proportional part,

unless previously paid out of rents;

that married woman shall not do any act whereby policy

for grantee to effect insurance on married woman's life;

or insurance on her life may become void;

for married woman's title;

for grantee to assurance to married woman and grantee;

[*135]

or for enabling grantee to effect insurances on married woman's life;

for payment of extra insurance;

for married woman's age and place of birth;

and for authentication thereof by grantee.

have been, or hereafter may be, effected upon her life, by or on the behalf of the said [*grantee*], his executors, administrators, and assigns, for any sum not exceeding the sum of [*purchase money*] pounds, shall or may be, or become or be liable to be impeached, void, or voidable: And also, that the said [*married woman*] now, at the time of the sealing and delivery of these presents, hath in herself good right, full power, and lawful and absolute authority, to make the charge and security so by her made as aforesaid: And also, that she the said [*married woman*], and also the said [*grantor*], his executors and administrators, shall and will at all times hereafter, at their or his own proper costs and charges in the law, and on the request of the *said [*grantee*], his executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, or executed, all and every further and other lawful and reasonable acts, deeds, things, and assurances in the law whatsoever, for further granting, assuring and confirming the said annuity, according to the true intent and meaning of these presents, or for enabling him the said [*grantee*], his executors, administrators, or assigns, by and at his or their costs, to effect an insurance or insurances, for his or their benefit, upon the life of the said [*married woman*], not exceeding the amount altogether of [*purchase money*] pounds, or from time to time to renew and keep alive the same; as by him or them, or his or their counsel, shall be reasonably advised or required: And further, that he the said [*grantor*], his executors or administrators, shall and will, from time to time, pay any extra rate of insurance which shall or may be, or become necessary upon or in respect of any such insurance as aforesaid, in the event or by reason of the said [*married woman*] going upon or beyond the seas: And lastly, that the said [*married woman*] was, on the —— day of —— last, of the age of —— years, and no more, and was born at ——, in the county of ——, and now is, and hath been for and during ten days preceding the day of the date of these presents, of insurable health, life, and constitution; and that he the said [*grantor*], his executors, administrators, and assigns, shall and will, whensoever he or they shall be thereunto requested, gra-

tuitously make, or cause to be made, due and sufficient proof, by authenticated certificates, affidavits, or other testimonials and evidence of the truth and correctness of the representations in this declaration contained, for the purposes of enabling, and as shall enable, the said [*grantee*], his executors, administrators, and assigns, to receive all or any sum or sums which he or they shall or may have insured as aforesaid, upon the life of the said [*married woman*] as aforesaid. PROVIDED *nevertheless*, that in case the said [*grantor*], or the said [*married woman*], or either of them, or their or either of their executors or administrators, should at any time or times hereafter be minded and desirous of re-purchasing the said annuity, and should give *to the said [*grantee*], his executors, [*136] administrators, or assigns, three calendar month's previous notice in writing of such his, her, or their mind or intention, and immedialely upon the expiration of such notice, should pay or cause to be paid to the said [*grantee*], his executors, administrators, or assigns, the full sum of [*original purchase money*] pounds, as and for the consideration of the re-purchase of the said annuity, together with all arrears thereof, and a proportional part thereof, up to the day of such re-purchase, together with all costs, charges, and expenses to be paid or incurred in or about the recovery thereof, and all other sums which shall or may be, or become due or payable under or by virtue of these presents,—*Then*, and thereupon, the said annuity, and all covenants, clauses, matters, and things hereinbefore contained, shall cease and determine. IN WITNESS, &c.

GRANT AND CHARGE ON MARRIED WOMAN'S SEPARATE ESTATE.

Proviso enabling grantor or married woman to re-purchase.

GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

*GRANT *of an* ANNUITY, *for the grantee's life, and* DEMISE *of* FREEHOLD *Premises, for a Term of One Thousand Years, and* COVENANT *to* SURRENDER COPYHOLD *Premises to Trustees; with Trusts for Sale, Mortgage, &c. and further secured by the* BOND *of the Grantor. The consideration being, a conveyance and Surrender of the Fee, of the same Freehold and Copyhold Premises* (*a*).

Parties.

THIS INDENTURE, made the —— day of —— in the —— George the Fourth, &c. 18—; BETWEEN [*grantor*], of, &c. of the first part; [*grantee*], of, &c. of the second part; and [*trustee*], of, &c. and [*other trustee*], of, &c. of the third part. WITNESSETH, that in pursuance of an agreement in this behalf, and in consideration that the freehold lands and hereditaments, hereinafter bargained, sold, and demised, or otherwise assured, or intended so to be, have, by indenture of lease and release bearing date respectively on or about the —— and —— days of —— now instant, the indenture of release being of three parts, and made, or expressed to be made, between the said [*grantee*], of the first part, the said [*grantor*], of the second part, and [*trustee to prevent dower*], gentlemen, of the third part, been conveyed by the said [*grantee*] to uses, and upon trusts, for the benefit of the said [*grantor*], his heirs, appointees, and assigns; and that the copyhold messuages, lands, and hereditaments, hereinafter covenanted to be surrendered, have been, or forthwith are to be surrendered by the said [*grantee*], to, or to the use of the said

Testatum, in consideration of conveyance of freehold lands to grantor to uses to prevent dower,

and covenant to surrender copyhold lands to grantor in fee.

[(*a*) No *ad valorem* duty attaches on this grant.]

[*grantor*], his heirs and assigns for ever; and that such conveyance had been made, and the said surrender has been, or is to be subject to an agreement, that an annuity *of —— hundred pounds a year, should be secured by the said [*grantor*] to the said [*grantee*] and his assigns, for his natural life (*b*), and should be charged on the said messuages, lands, and hereditaments, hereby bargained, sold, and demised, and covenanted to be surrendered, or otherwise assured, or intended so to be, in such manner as is hereinafter mentioned, in addition to a bond of the said [*grantor*], which he hath entered into, to the said [*grantee*], for securing the same annuity (*c*); and also in consideration of ten shillings of lawful money current in Great Britain, to the said [*grantor*], well and truly paid, by the said [*grantee*], immediately before the execution of these presents, the receipt whereof is hereby acknowledged, *The* said [*grantor*], for himself, his heirs, executors, and administrators, *hath* granted, bargained, sold, and confirmed, and by these presents *doth* grant, bargain, sell, and confirm, *And* by virtue and in exercise of every power and authority enabling him in this behalf, *doth* direct, limit, and appoint to the said [*grantee*], and his assigns, ONE annual sum, or yearly rent-charge, of —— hundred pounds of lawful money of the United Kingdom of Great Britain and Ireland, current in Great Britain, to commence or to be considered as commencing from the —— day of —— now last past; and to be yearly issuing, going, and payable out of, and charged and chargeable upon, *All* and singular the freehold lands and hereditaments hereinafter bargained, sold, and demised, or otherwise assured, or intended so to be, and every part and parcel of the same, with their rights, members, and appurtenances. To HAVE, hold, receive, take, and enjoy, the

GRANT, USUAL COVENANTS FOR FREEDOM, AND COVENANT TO SURRENDER COPYHOLDS, TITLES FOR SALE, &c.

[*138]

Reference to bond.

Nominal consideration to grantor.

Grant of

annuity,

charged upon lands, hereinafter demised.

Habendum to

(*b*) It has been decided that a memorial of the securities, in a similar case to the above, need not be enrolled. *Vide ante*, Vol. 1, p. 335.] Memorial not necessary

(*c*) See the form of this bond, Vol. 1, p. 496.

[A vendor of an estate in consideration of an annuity, is entitled to have it secured on the estate, and by a bond and judgment. *Post*, p. 356, n.]

GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

grantee and his assigns for his life;

said annual sum, or yearly rent-charge of —— hundred pounds, unto the said [*grantee*], and his assigns, for and during the term of his natural life. The same annual sum, or yearly rent-charge, to be payable and paid to the said [*grantee*], and his assigns, at or in the dining-hall of the Inner Temple, London, by even and equal portions, or half-yearly payments, on the days or times hereinafter

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*mentioned; that is to say, the —— day of —— and the —— day of —— in every year, and between the hours of two and four in the afternoon of the same days respectively; and

without any deduction;

without any deduction or abatement whatsoever thereout, or out of any part thereof, for or in respect of any taxes, charges, rates, impositions, or assessments whatsoever, at any time or times heretofore, and to be at any time, and from time to time hereafter taxed, charged, assessed, or imposed on the said lands and hereditaments, or any of them, or any part thereof, or on the said annual sum or yearly rent charge of —— hundred pounds, or any part thereof, or on the said [*grantee*], or his assigns, in respect of the same, either by authority of parliament, or otherwise howsoever, or for or in respect of any other matter, cause, or thing whatsoever; the first half-yearly payment of the said annual sum, or yearly rent-charge of —— hundred pounds, to

with proportional part to his decease.

become due, and be made on the —— day of next ——: and a proportional part of the said annuity to be paid up to the time of the decease of the said [*grantee*], in case he should die on any other day than one of the said days of payment; and in case he should die before the —— day of next ——, then the said proportion to be computed from the [*day of commencement*] of —— last past.

Power of distress on freehold lands.

And the said [*grantor*] doth hereby grant to the said [*grantee*] and his assigns, that from time to time, when, and as often as it shall happen, that the said annual sum, or yearly rent-charge of —— hundred pounds, or any half-yearly payment of the same, shall be in arrear or unpaid, in the whole or in part, by the space of fourteen days next over or after any one of the days, or times whereon the same is hereinbefore appointed to be paid as aforesaid; then, and so often, and from time to time, it shall and may be lawful to and for the said [*grantee*] and

his assigns, into and upon the said lands and hereditaments, out of which the said annual sum or yearly rent-charge of —— hundred pounds, is to be issuing and payable; or into, and upon any part thereof, to enter and distrain for the same annual sum or yearly rent-charge, and all the arrears thereof. And the distress and distresses then and there found, to detain, manage, sell, and dispose *of, in the same manner in all respects, and upon the same terms, as distresses for rents reserved upon leases for years may be, and are, or ought to be managed, sold, and disposed of, and as if the said annual sum or yearly rent of —— hundred pounds was a rent reserved upon a lease for years. To the intent that the said [*grantee*] and his assigns shall thereby, therewith, or otherwise, be fully satisfied and paid the said annual sum of ——— hundred pounds, and all arrears thereof, and all costs, charges, and expenses to be occasioned by the non-payment thereof, at the days or times hereinbefore appointed for payment of the same. And further, that from time to time, when and as often as it shall happen that the said annual sum, or yearly rent of —— hundred pounds, or any part thereof, shall be in arrear or unpaid by the space of twenty-one days, next over or after any one of the said days whereon the same is hereinbefore appointed to be paid as aforesaid; then, and so often, and from time to time, either upon or at any time after the expiration of the said twenty-one days, it shall and may be lawful to and for the said [*grantee*] and his assigns, (although no formal or legal demand (*c*) shall have been made of the said annual sum, or yearly rent of —— hundred pounds), into and upon the said lands and hereditaments, out of which the said annual sum or yearly rent is to be issuing and payable as aforesaid; or into and upon any part of the same lands and hereditaments, in the name of all the same lands and hereditaments to enter; and the same to have, hold, and enjoy, and the rents and profits thereof, and of every part thereof, to receive and take, to and for his and their own use and benefit, until he or they shall thereby or therewith, or

GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

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Power of entry on freehold lands.

(*c*) *Vide* Vol. 1, p. 625; Vol. 2, p. 13, (*i*).

GRANT, DEMISE OF PREMISES, AND COVENANT FOR SURRENDER FOR LIFE, TRUSTS FOR SALE, &c.

otherwise, be fully satisfied and paid the said annual sum or yearly rent of —— hundred pounds, and all the arrears thereof, and also so much of the same annual sum, or yearly rent, as from time to time shall incur and grow due during such time as the said [*grantee*], or his assigns, shall continue in the possession of the premises after every such entry as aforesaid; and also all such costs, losses, charges, [*141] *damages, and expenses, as shall be occasioned by non-payment of the said annual sum or yearly rent, or of any part thereof, at the days and times aforesaid. And such possession, when taken, to be without impeachment of waste (*d*).

Further Testatum.

AND THIS INDENTURE ALSO WITNESSETH, that for further, better, and more effectually securing the said annual sum, or yearly rent of —— hundred pounds, according to the true intent and meaning of these presents: and also, in consideration of ten shillings of lawful money current in Great Britain, to the said [*grantor*] well and truly paid by the said [*two trustees*], immediately before the execution of these presents; the receipt whereof is hereby acknowledged; *The* said [*grantor*], on the nomination, and at the instance and request, and by the direction and appointment of the said [*grantee*], testified by his executing these presents, *hath* granted, bargained, sold, and demised; and by these presents *doth* grant, bargain, sell, and demise; *And* by virtue and in exercise of every power and authority enabling him in this behalf, *doth* direct, limit, and appoint unto the said [*two trustees*], their executors, administrators, and assigns, ALL THOSE, &c. [*freehold parcels*]. *All* which said freehold lands and hereditaments, together with the copyhold messuage, lands, and hereditaments hereinafter covenanted to be surrendered, *are* now better known by the description contained in the schedule to these presents. AND all buildings, barns, stables, yards, commons, and common of pasture and of turbary, and other commonable rights, bridges, ditches, fences, mounds, ways, paths, waters, watercourses, liberties, privileges, easements, profits, commodities, advantages, and emoluments whatsoever, to the said lands and hereditaments hereinbefore released, or other-

Nominal consideration to grantor by trustees.

By direction of grantee,

demise

and appointment

to trustees

of freehold parcels.

Reference to modern description in schedule.

General words for farms.

(*d*) *Vide* Vol. 1. p. 628.

wise assured, or intended so to be, or any of them respectively belonging, or in anywise appertaining, or accepted, reputed, deemed, taken, known, held, occupied, or enjoyed, as part, parcel, or member of the same, or any of them respectively. AND the reversion and reversions, remainder and remainders, yearly and other rents and profits of the said freehold lands, and hereditaments hereby demised, *or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances. TO HAVE AND TO HOLD the said freehold lands and hereditaments, and all and singular other the freehold premises hereby bargained, sold, and demised, or otherwise assured, or intended so to be, and every part and parcel of the same with their and every of their rights, members, and appurtenances, unto the said [*two trustees*], their executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during the term or time of 1000 years thence next ensuing, and fully to be complete and ended; without impeachment of or for any manner of waste: (*e*) *Nevertheless* UPON the several trusts, and for the several ends, intents, and purposes, hereinafter expressed and declared of and concerning the same; that is to say; UPON trust for securing to the said [*grantee*] and his assigns, the due and regular payment of the said annual sum or yearly rent of —— hundred pounds hereby granted to him and them, and such proportionate part thereof as aforesaid. AND UPON THIS FURTHER TRUST, that in case, and when and as often as the said annual sum or yearly rent of —— hundred pounds, or any half yearly payment thereof, shall be in arrear and unpaid in the whole or in part by the space of forty days, next after any one of the days or times hereinbefore ap-

GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

And the reversion, &c.

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Habendum to trustees for 1000 years,

upon the trusts hereinafter declared; viz.

upon trust for securing annuity.

And upon trust if annuity should be in arrear forty days, out of the rents, or by mortgage, &c. to raise arrears and all costs, &c.

(*e*) Where an estate "and all woods" upon it are demised for a term (without express words making the termor dispunishable of waste), upon trust by different specified ways and means, including "felling timber," to raise and pay an annuity when in arrear, *quære*, whether this gives the annuitant any interest in the timber, or operates as a mere personal agreement; *Pavis* v. The Duke of *Marlborough*, 2 Wils. Chan. Rep. 147; see also *Fairfield* v. *Weston*, 2 Sim. & Stu. 96.

GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &C.

pointed for payment thereof; then, and in that case, and from time to time, as often as it shall so happen, the said [*two trustees*], and the survivor of them, his executors, administrators, or assigns, do and shall, by and out of the rents and profits of the said lands and hereditaments comprised in the said term of 1000 years; or by mortgage or sale thereof, or of a competent part thereof, for all or any part of the said term of 1000 years; or by bringing actions against, or making distresses upon all and every, or any of the present or future tenants of the same hereditaments and premises, for recovery of the rents then in arrear; or by making entries upon the same hereditaments and premises; or by all and every, or any one or more of the said ways and means; or by any other lawful and reasonable ways and means whatsoever, levy

[*143] *and raise such arrears of the said annual sum or yearly rent of —— hundred pounds, as from time to time shall become due and remain unpaid; together with all such damages, costs, charges, and expenses as the said [*grantee*], or his assigns, shall incur, expend, sustain, or be put unto, by reason of the nonpayment of the said annual sum, or yearly rent of —— hundred pounds, or any part thereof; together with the costs, charges, and expenses attending the execution of the trusts of the said term of 1000 years. AND UPON THIS FURTHER TRUST, that the said [*two trustees*], and the survivor of them, his executors, administrators, or assigns, do and shall, in the first place, retain and reimburse to and for himself and themselves, the costs, charges, and expenses of and attending the execution of the trusts hereby reposed in him and them: *And* in the next place, do and shall pay and satisfy to the said [*grantee*], his heirs, executors, administrators, or assigns, all arrears of the said annual sum or yearly rent of —— hundred pounds; and all costs, charges, damages, and expenses which he or they shall have incurred, suffered, borne, sustained, and laid out by reason or on account of the nonpayment thereof, or in or about recovering and enforcing the payment of the same. AND UPON THIS FURTHER TRUST, that in the mean time, and until the said annual sum or yearly rent of —— hundred pounds, or some half yearly payment thereof shall be in

And upon trust in the first place to pay the costs of executing the trusts:

and in the next place to pay arrears of annuity, and all grantee's costs.

And upon further trust until annuity be in arrear forty days, and when all arrears and

arrear or unpaid, in the whole, or in part, by the space of forty days, next after the time hereby appointed for the payment of the same; and also from time to time, when and as often as all the arrears of the said annual sum or yearly rent of —— hundred pounds, and the said costs, charges, damages, and expenses shall be raised, or fully satisfied and paid, the said [*two trustees*], and the survivor of them, his executors and administrators, do and shall permit and suffer the said [*grantor*], his heirs, appointees, or assigns, or other person or persons who for the time being shall be entitled to the reversion or remainder of the hereditaments comprised in the same term of 1000 years, expectant on the determination of the said term of 1000 years, to receive and take the rents and profits of the same hereditaments and premises to and for his and their own use *and benefit. AND UPON THIS FURTHER TRUST, that they the said [*two trustees*], and the survivor of them, his executors and administrators, do and shall, from time to time, after paying the said annual sum or yearly rent of —— hundred pounds, when and as the same shall become due and payable; and also, after deducting and retaining such costs, charges, damages, and expenses as aforesaid, pay to the said [*grantor*], his heirs, appointees, or assigns, or other person or persons for the time being entitled in reversion as aforesaid, or to whom he or they shall appoint, the money (if any) which from time to time shall remain in the hands of the said [*two trustees*], or the survivor of them, his executors or administrators. PROVIDED ALWAYS, *and it is hereby declared and agreed*, by and between the parties to these presents, that after the decease of the said [*grantee*], and payment to him and to his executors, administrators, or assigns, of the said annual sum or yearly rent of —— hundred pounds, and all the arrears thereof; and also of such proportionate part as aforesaid; and also, after payment of all such costs, charges, damages and expenses as aforesaid; and also, after full performance or discharge of the trusts of the said term of 1000 years; then and thenceforth the said term of 1000 years, of or in the hereditaments and premises therein comprised, or so much of the same term as shall not be disposed of under the trusts

GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

costs shall be satisfied, trustees to permit grantor to take the rents, &c.

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and upon trust to pay surplus monies to grantor.

Proviso for cessor of term.

GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

hereby declared concerning the same term, shall cease, and determine, and be void: but without prejudice to any sale, mortgage, or disposition previously made of all or any part of the hereditaments and premises comprised in the said term of 1000 years, for any of the purposes hereinbefore mentioned, in pursuance of the trusts hereinbefore declared concerning the same term. AND *it is hereby provided, declared, and agreed*, by and between the parties to these presents; and the said [*grantee*] and [*grantor*] do hereby severally direct and appoint, that the person or persons who shall pay to the said [*two trustees*], or the survivor of them, his executors, administrators, or assigns, all or any part of the rents and annual profits of the said lands and hereditaments comprised in the said term of 1000 years; or advance any money upon any sale

Indemnity clause to tenants, purchasers, mortgagees, and other persons paying money to trustees.

[*145] or sales, or the *security of any mortgage or mortgages of the said lands and hereditaments, comprised in the said term of 1000 years; or otherwise pursuant to the trusts hereinbefore contained, shall not be obliged or required to see to the application of the said rents, profits, and money respectively or any of them; nor be answerable or accountable for the misapplication or non-application of the same rents, profits, and money. *And* that every receipt which shall be given by the said [*two trustees*], or the survivor of them, his executors or administrators, for all or any part of the said rents, profits, and money respectively, shall be a good and sufficient acquittance and discharge for the sum and sums of money, which, by the receipt respectively, shall be acknowledged or expressed to be, or to have been received. AND the said [*grantor*] doth hereby, for himself, his heirs, executors, and administrators, covenant, declare, and agree, to and with the said [*grantee*], his heirs and assigns, that he the said [*grantor*], or his heirs, shall or will, as soon as conveniently may be after he or they shall become tenant or tenants of the copyhold messuages, lands, and hereditaments hereinafter mentioned and covenanted to be surrendered, on the request of the said [*grantee*] or his assigns, and at the costs and charges of the said [*grantor*] his heirs or assigns, at a court to be held at the manor of ——, in the said county of ——

Trustees' receipts to be sufficient discharges.

Covenant by grantor to surrender copyhold lands,

and either in person or by attorney, surrender into the hands of the lord or lords, lady or ladies of the said manor of ——, according to the custom of the said manor, *To the use and behoof* of the said [*two trustees*], their heirs and assigns for ever; *Subject nevertheless* to a CONDITION (*f*) to avoid the same surrender, on the due and regular payment of the said annual sum or yearly rent of —— hundred pounds, and the said proportional part thereof, according to the true intent and meaning of these presents, ALL THAT, &c. [*copyhold parcels*]. (*Which* said copyhold messuage, lands, and hereditaments, together with the said freehold lands and *hereditaments hereinbefore described, are now better known by the names and other descriptions contained in the schedule to these presents). *To the intent* that the said [*two trustees*], or the survivor of them, or his heirs, when admitted tenants or tenant of the said copyhold messuage, lands, and hereditaments, may be so admitted, TO HOLD the same to them or him, their or his heirs and assigns for ever; at the will of the said lord or lords, lady or ladies of the said manor, by copy of court roll, according to the custom of the said manor; *And* by and under the rents, suits, and services, therefore due, and of right accustomed to be paid and performed. AND that in the mean time, and until such surrender shall be made, and the said condition shall be broken, and the said [*two trustees*], or the survivor of them, or his heirs, shall be admitted tenant or tenants, under and by virtue of the same surrender or surrenders respectively, when the condition shall be broken, the said [*grantor*], and his heirs, shall stand and be seised or possessed of the same copyhold messuage, lands, and hereditaments, and every part and parcel of the same, with the appurtenances, *Upon trust* to surrender the same, according to the true intent and meaning of these presents. AND the said [*two trustees*], and their heirs, or the survivor of them, and his heirs, when admitted

GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

to the use of the trustees in fee;

subject to condition to avoid same on due payment of annuity.

Copyhold parcels.

Reference to modern description in schedule.

[*146]

To the intent that trustees may be admitted;

habendum in fee;

at the will of the lord;

under the rents, &c.

and until surrender be made, condition broken, and trustees admitted, grantor to be possessed of copyhold lands, upon trust to surrender same.

Trustees when admitted to hold copyhold lands,

(*f*) The condition of the surrender may be the same as the condition of the bond, Vol. 1, p. 497, *mutatis mutandis*.

See an outline of the practice as to copyhold securities for annuities, Vol. 1, 563, (*c*).

GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

tenants or tenant of the said copyhold messuage, lands, and hereditaments, shall hold the same messuage, lands, and hereditaments, *Upon*, under, and subject to the same, or the like trusts, provisions, regulations, declarations, and agreements, as are hereinbefore expressed and declared, or contained, of and concerning the said term of 1000 years in the said freehold lands and hereditaments; or as near thereto as may be, and the nature of the estate of the said [*two trustees*], and their heirs, or the survivor of them, and of his heirs, will admit.

upon trusts &c. by reference to those declared of freehold lands.

But the said [*grantor*] doth hereby declare and direct, that as between his real and personal representatives, his personal estate shall be the primary fund, the rents of the said freehold lands and hereditaments the secondary fund, and the rents of the said copyhold messuage, lands, and hereditaments the third, or ultimate fund, for securing and satisfying the said annuity, or yearly rent charge of —— hundred pounds, when and as the *same shall become payable; any thing hereinbefore contained to the contrary notwithstanding.

Declaration by grantor, that as between his real and personal representatives, his personal estate shall be the primary fund, the rents of the freehold lands the secondary fund, and the rents of the copyhold lands the ultimate fund for satisfying annuity.

AND THE SAID [*grantor*] for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, some or one of them, shall and will, from time to time, well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, the said annuity of —— hundred pounds, and also such proportional part thereof as aforesaid, free and clear of and from all taxes, charges, rates, and other deductions whatsoever, parliamentary or otherwise, at the days and times, and in manner and form hereinbefore expressed, limited, and appointed for the payment thereof, and according to the true intent and meaning of the parties to these presents.

Covenant for paying annuity for grantee's life:

[*147]

AND ALSO that he the said [*grantor*], now at the time of the sealing and delivery of these presents, hath in himself good right or full power, and lawful and absolute authority, to subject and charge all the said freehold lands and hereditaments hereby charged or made chargeable with the said annuity of —— hundred pounds, with the rights, members, and appurtenances, to and with the

for title to charge freehold lands with payment of annuity;

payment of the said annuity of —— hundred pounds, and the powers and remedies hereby given for compelling and enforcing the payment thereof: AND ALSO, to demise the same lands, and hereditaments, with their rights, members, and appurtenances, unto the said [*two trustees*], their executors, administrators, and assigns, for the said term of 1000 years; upon the trusts and for the purposes aforesaid, and according to the true intent and meaning of these presents. AND ALSO, that the said freehold lands and hereditaments, and the said copyhold messuages, lands, and hereditaments hereby covenanted to be surrendered, hereby charged or made chargeable with the said annuity of —— hundred pounds, shall from time to time during the natural life of the said [*grantee*], continue and be subject to the payment of the said annuity of —— hundred pounds, and the said trusts, and powers and remedies by distress and entry. AND MOREOVER, that he the said [*grantor*] and his heirs, and all and every other persons *and person whosoever, lawfully claiming or to claim by, from, under, or in trust for him, shall and will, at any time or times, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said [*grantee*], or his assigns, make, do, and execute, or cause, or procure to be made, done, and executed, all such further and other lawful and reasonable act and acts, deed and deeds, assurance and assurances in the law whatsoever, for further, better, and more perfectly, lawfully, and absolutely or satisfactorily granting and assuring the said annuity of —— hundred pounds hereby granted, or intended so to be, with such powers and remedies as aforesaid, unto the said [*grantee*] and his assigns: *And also* for demising or otherwise assuring the said freehold lands and hereditaments hereby granted and demised, or otherwise assured, or intended so to be, and every part of the same, with the appurtenances, unto the said [*two trustees*], their executors, administrators, and assigns, or unto such other person or persons as the said [*grantee*], his executors, administrators, or assigns, shall direct or appoint for all the then residue of the said term of 1000 years, upon the trusts, and for the ends, intents, and purposes aforesaid, and according to the true intent and meaning of these presents: *And also*, for surrendering the said copyhold

GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

to demise freehold lands;

and that freehold and copyhold lands shall during grantee's life continue subject to payment of annuity.

Covenant for further assurance;

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for better securing annuity;

for demising freeholds;

and for surrendering copyholds.

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messuage, lands, and hereditaments, to the use of the said [*two trustees*], their heirs and assigns, according to the true intent and meaning of these presents: *As* by the said [*grantee*], or his assigns, or his or their counsel in the law, shall be reasonably devised or advised, and required and be tendered to be made, done, and executed. PROVIDED ALWAYS, *and it is hereby declared and agreed* by and between all the parties to these presents, that the said [*two trustees*], and each of them, and the heirs, executors, administrators, and assigns of them, and each of them, shall be charged and chargeable only for such monies as they respectively shall actually receive by virtue of the trusts hereby reposed in them; notwithstanding his or their, or any or either of their giving or signing, or joining in giving or signing, any receipt or receipts, for the sake of conformity. AND that either of them shall not be answerable for any banker or other person with whom, or in

Indemnity clauses to trustees.

[*149] *whose hands any part of the said trust monies shall or may be deposited, or lodgod for safe custody, or otherwie, in the execution of the trusts hereinbefore contained. AND that they, or any of them, shall not be answerable or accountable for any misfortune, loss, or damage which may happen in the execution of the aforesaid trusts, or in relation thereto, except the same shall happen by or through his or their own wilful default respectively; and then and in that case, each person respectively shall singly and alone be answerable for such loss or damage as shall arise from his or her own default. AND ALSO, that it shall and may be lawful to and for the said [*two trustees*] respectively, and their respective heirs, executors, administrators, and assigns, by and out of the monies which shall come to their respective hands by virtue of the trusts aforesaid, to deduct, retain, and reimburse to and for himself and themselves respectively, all costs, charges, damages, expenses, and fees to counsel for advice, which they, or any of them, shall or may suffer, sustain, expend, disburse, lay out, be at, or be put unto, in or about the execution of the aforesaid trusts, or in relation thereunto. IN WITNESS, &c.

Trustees to reimburse themselves all costs, &c.

Schedule.

THE SCHEDULE to which the above written indenture refers.

GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

*GRANT *of an* ANNUITY *for Ninety-nine Years, if the Grantee, and two Nominees, or the Survivors or Survivor of them, should so long live: charged on Freehold Premises, over the Fee of which the Grantor has power, under the usual limitations to prevent Dower, and on Leasehold Premises held for the remainder of a term for years,* DEMISE *of the Freehold Premises by Grant and Appointment for* 500 *Years, and Demise of the Leasehold Premises by way of underlease to a Trustee,* UPON TRUST, *after default in payment, out of the Rents and Profits, or by demising, mortgaging, or selling, &c. the Freehold and Leasehold Premises, to raise Arrears of the Annuity, and all Costs:* COVENANT *by Grantor to* INSURE *the Premises in the Grantee's name against damage by* FIRE, *and to deliver Policies to Grantee:* AGREEMENT *that on his default Grantee may Insure; that the Costs of such Insurances may be raised by the same ways as Annuity is raisable; and that Monies recoverable on Policies shall be expended in rebuilding or repairing Premises:* DEFEAZANCE *on* JUDGMENT *entered on Warrant of Attorney:* POWER *to* REPURCHASE *after a given time, on paying original Purchase Money, and giving Three Month's Notice, or paying one Quarter's Annuity in addition: and* ASSIGNMENT *of a Term to a Trustee,* UPON TRUST *for better securing the Annuity; and subject thereto,* IN TRUST *for the Grantor: and to attend the Reversion, &c.*

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—; BETWEEN [*grantor*], of, Parties.

GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

*&c. of the first part; [*grantee*], of, &c of the second part; [*trustee for securing annuity*], of, &c. of the third part: [*trustee of attendant term*], of, &c. of the fourth part: and [*assignee of term*], of, &c. of the fifth part. (*Recite lease and release, or lease, appointment, and release of the freeholds, to such uses as the grantor shall appoint, to prevent dower,* ut ante, Vol. 1, p. 652. *And recite lease, &c. whereby the grantor is entitled to the leaseholds for the remainder of a term, of which eight years and one quarter were unexpired on the 25th day of March last,* ut ante, p. 47.) AND WHEREAS the said [*grantor*] hath contracted and agreed with the said [*grantee*], for the absolute sale to her of one annuity or clear yearly sum of —— pounds, to be paid to her the said [*grantee*], her executors, administrators, and assigns, during the term of ninety-nine years, if the said [*grantee*], and [*nominee*], of, &c. and [*other nominee*], of, &c. or the survivors or survivor of them, should so long live, and to be secured in manner hereinafter mentioned, at or for the price or sum of —— pounds. AND on the treaty for the purchase of the said annuity, it was agreed that all the expenses of preparing and perfecting the securities for the same should be borne by the said [*grantor*], AND WHEREAS, in pursuance and performance of the said agreement on the part of the said [*grantee*], she the said [*grantee*] has this day paid to the said [*grantor*], the sum of [*purchase money*] pounds, [in notes of the governor and company of the Bank of England, commonly called bank notes, expressed to be payable on demand.] AND in pursuance and part performance of the said agreement, he the said [*grantor*] hath this day executed a deed poll or warrant of attorney, bearing even date with these presents, authorizing certain attornies of his majesty's court of —— at Westminster, or any other attorney of the same court, to confess judgment against him the said [*grantor*], in the said court of ——, in an action of debt, at the suit of the said [*grantee*], for the sum of [*double the purchase money*] pounds, for money borrowed and costs of suit: and it is intended and agreed, that judgment shall be immediately entered up thereupon accordingly. NOW THIS INDENTURE WITNESSETH, that in pursuance and perform-

Recital of contract for purchasing an annuity for 99 years, if either of three persons should so long live.

Recital of payment of consideration money.

Recital of warrant of attorney for securing annuity when there is no bond.

First Testatum.

*ance of the said agreement on the part of the said [*grantor*]; and in consideration of the sum of [*purchase money*] pounds of lawful money of Great Britain, by the said [*grantee*], paid to the said [*grantor*], as is hereinbefore is mentioned; the receipt and payment of which said sum of [*purchase money*] pounds he the said [*grantor*], doth hereby acknowledge; and of and from the same and every part thereof, doth acquit, release, and for ever discharge the said [*grantee*], her executors, administrators, and assigns, by these presents; *He*, the said [*grantor*], *hath* given, granted, bargained, sold, and confirmed; and also directed, limited, and appointed; and by these presents *doth* give, grant, bargain, sell, and confirm; and also in exercise and execution of the power and authority limited to him the said [*grantor*], as hereinbefore is mentioned; and of every or any other power or authority enabling him in this behalf, direct, limit, and appoint unto the said [*grantee*], her executors, administrators, and assigns, ONE annuity or clear yearly sum of —— pounds of lawful money of Great Britain to be paid and payable for and during the term of ninety-nine years, to commence and be computed from the day of the date of these presents, and thenceforth next ensuing and fully to be complete and ended, if the said [*grantee*], [*nominee*], and [*other nominee*], or the survivors or survivor of them, should so long live: AND to be charged and chargeable upon, and yearly issuing and payable out of the said freehold messuages, tenements, lands, and hereditaments, hereinbefore particularly mentioned and comprised in the said hereinbefore in part recited indentures, of lease and release, (*or* indenture of lease, and indenture of appointment and release); and also out of and upon the said messuage or tenement and premises mentioned and comprised in the said hereinbefore in part recited indenture of lease bearing date on or about the —— day of ——, 18—, and out of and upon their respective appurtenances. TO HAVE, hold, receive, take, and enjoy the said annuity, or yearly rent, or sum of —— pounds, unto the said [*grantee*], her executors, administrators, and assigns, for and during the said term of ninety-nine years, if the said [*grantee*] [*nominee*], and [*other nominee*], or the survivors or survi-

GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

Grant and appointment by a person having a power over the fee of the freehold lands, under the usual limitations to prevent dower, of

an annuity,

for ninety-nine years,

if the grantee and two nominees, any or either of them, should so long live;

to be charged upon freehold and leasehold lands.

Habendum,

for 99 years, if, &c.

GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

*vor of them should so long live: and to be paid and payable at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, by equal quarterly payments, on, &c. in every year; without any deduction or abatement whatsoever, out of the same, or any part thereof, on account or in respect of any taxes, charges, assessments, or impositions already taxed, charged, assessed, or imposed, or to be hereafter taxed, charged, assessed, or imposed upon the hereditaments and premises hereby charged with the payment of the said annuity, or yearly rent or sum of —— pounds, or on the said [*grantor*], his heirs, executors, administrators, or assigns, or any other person or persons whomsoever, by authority of parliament, or otherwise howsoever. The first quarterly payment of the said annuity, or yearly rent or sum, to be made on the —— day of —— now next ensuing, if any of them the said [*grantee*], [*nominee*] and [*other nominee*], should be then living; and if the survivor of them, the said [*grantee*], [*nominee*], and [*other nominee*], should depart this life on any other day than any of the said quarterly days of payment, a proportional part of the said annuity, yearly rent, or sum of —— pounds, to be paid to the executors, administrators, or assigns, of the said [*grantee*], immediately after the decease of the survivor of them the said [*grantee*], [*nominee*], and [*other nominee*], for the time which such survivor shall have lived, of the then current quarter of a year. And the said [*grantor*], doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, grant, and agree, with and to the said [*grantee*], her executors, administrators, and assigns; and also, in exercise and execution of every or any power or authority, enabling him in this behalf, direct, limit, and appoint in manner following; that is to say, that if the said annuity, yearly rent, or sum of —— pounds, or any part thereof, should be in arrear and unpaid by the space of twenty-one days next over or after any of the said days or times, whereon the same is hereinbefore appointed to be paid as aforesaid; *Then* and in such case and as often as it shall so happen, it shall and may be lawful to and for the said [*grantee*], her executors, administrators, and assigns, into and upon the said messuages or

payable quarterly, without any deduction.

The first payment to be on, &c. if either of the lives be then living:

with a proportional part to the death of the survivor.

Power of distress by the donee of a power.

*tenements, lands, hereditaments, and premises hereby charged with the payment of the said annuity, yearly rent, or sum of —— pounds, or into or upon any part thereof, to enter and distrain for the same annuity, yearly rent, or sum, and all arrears thereof; and the distress and distresses then and there found, to lead, drive, carry away, and impound, and the same in pound to detain and keep, until the said annuity, yearly rent, or sum of —— pounds, and all arrears thereof, and all costs, charges, and expenses whatsoever, sustained, or occasioned by or attending the making, taking, and keeping such distress and distresses, shall be fully paid and satisfied: And in default of payment thereof, in due time after such distress shall be made and taken, to appraise, sell, or otherwise to act therein, according to the due course of law, in the same manner in all respects as landlords are by act of parliament authorized to do, in respect to distresses for arrears of rent reserved upon leases for years; *to the intent*, that thereby and therewith the said [*grantee*], her executors, administrators, and assigns, shall and may be fully paid and satisfied the said annuity, yearly rent, or sum of —— pounds, and all arrears thereof, or so much thereof as shall be then remaining due and unpaid, and all costs, charges, and expenses whatsoever sustained or occasioned by the nonpayment thereof. And also, that if the said annuity, yearly rent, or sum of —— pounds, or any part thereof, should be in arrear and unpaid by the space of forty days next over or after any of the said days or times appointed for payment thereof as aforesaid; *Then* and in such case, and as often as it shall happen, and either upon or at any time after the expiration of the said forty days, (although no formal demand (*a*) thereof should be made) it shall and may be lawful to and for the said [*grantee*], her executors, administrators, and assigns, into and upon the said messuages, or tenements, lands, hereditaments, and premises, hereby charged therewith, or into or upon any part thereof, in the name of the whole, to enter, and the same to have, hold, and enjoy, and the rents, issues, and profits thereof, and of every part thereof, to re-

GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

Power of entry.

(*a*) *Vide ante*, p. 13 (*i*).

GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

*ceive and take to and for her and their own use and benefit, until she or they shall be thereby or therewith, or otherwise, fully paid and satisfied all arrears of the said annuity, yearly rent, or sum of —— pounds; and also so much of the same annuity, yearly rent, or sum, as shall incur and grow due, during such time as the said [*grantee*], her executors, administrators, or assigns, shall continue in possession of the said messuages or tenements, lands, hereditaments, and premises, after such entry or entries as aforesaid; together with all such loss, costs, charges, damages, and expenses whatsoever, as shall be sustained or occasioned by reason or means of the non-payment thereof, or of any part thereof, at or on the days appointed for the payment of the said annuity, or yearly rent, or sum of —— pounds: and such possession, when taken, to be without impeachment of waste (*b*). AND THIS INDENTURE ALSO WITNESSETH, that in pursuance and further performance of the said agreement on the part of the said [*grantor*], and in consideration of the said sum of [*purchase money*], paid to him the said [*grantor*], as hereinbefore is mentioned; and for more effectually securing the payment of the said annuity, yearly rent, or sum of —— pounds, to the said [*grantee*], her executors, administrators, and assigns; and for and in consideration of the sum of ten shillings of lawful money of Great Britain, to the said [*grantor*] paid by the said [*trustee for securing annuity*], at or immediately before the sealing and delivery of these presents; the receipt whereof is hereby acknowledged; *He* the said [*grantor*], at the request and by the direction, and upon the nomination and appointment of the said [*grantee*], testified by her sealing and delivering these presents, *hath* granted, bargained, sold, and demised; and also directed, limited, and appointed; *And* by these presents *doth* grant, bargain, sell, and demise; and also (in exercise and execution of every or any power or authority, enabling him in this behalf) direct, limit, and appoint unto the said [*trustee for securing annuity*], his executors, administrators, and assigns, the said messuages or tenements, lands, hereditaments, and premises herein-

Second Testatum.

Demise of freehold and leasehold lands to a trustee, by a person having a power over the fee of the freehold lands, under the usual limitations to prevent dower.

Parcels.

(*b*) *Vide*, Vol. 1, p. 628.

before particularly mentioned, *and hereby charged with the payment of the said annuity, or yearly rent, or sum of —— pounds, or expressed and intended so to be, with their and every of their appurtenances. TO HAVE AND TO HOLD the said freehold messuages or tenements, lands, and hereditaments hereinbefore granted and demised, or expressed and intended so to be, with the appurtenances, unto the said [*trustee*], his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during, and unto the full end and term of five hundred years, thenceforth next ensuing, and fully to be complete and ended; without impeachment of or for any manner of waste. AND TO HAVE AND TO HOLD the said leasehold messuage or tenement and premises hereinbefore particularly mentioned and comprised in the said in part recited indenture of lease, bearing date on or about the —— day of ——, 18—, with the appurtenances, unto the said [*trustee*], his executors, administrators and assigns, from the twenty-fifth day of March last, for and during, and unto the full end and term of eight years and one quarter of a year wanting ten days (*c*), thenceforth next ensuing and fully to be complete and ended. *Nevertheless*, as to all and singular the hereditaments and premises hereinbefore granted, bargained, sold, and demised, or expressed and intended so to be, UPON THE TRUSTS, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, and agreements hereinafter expressed and contained of and concerning the same; that is to say, UPON TRUST that if the said annuity, yearly rent, or sum of —— pounds, or any part thereof, should at any time or times be in arrear and unpaid by the space of forty days, next after any of the said days or times hereinbefore appointed for the payment thereof as aforesaid; *Then* and in such case, and when and so often as the same shall so happen, he the said [*trustee*], his executors, administrators, or assigns, do and shall, by and out of the rents, issues, and profits of the said

GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

Habendum, the freehold lands for 500 years.

And *habendum* the leasehold lands for eight years and one quarter wanting ten days, by way of underlease.

Upon the trusts, &c. following;

upon trust, after annuity shall be in arrear forty days, out of the rents and profits, or by demising, mortgaging, or selling, &c. premises, to raise arrears of annuity, and all costs;

(c) This demise of the leasehold premises, by way of underlease, is preferable to an assignment, for the reasons stated, Vol. I. p. 337*, and Vol. II. p. 52, (*a*).

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messuages or tenements, lands, hereditaments, and premises; or by demising,* leasing, mortgaging, or selling the said freehold messuages or tenements, lands, and hereditaments, or any part thereof, for all or any part of the said term of 500 years; or by demising, leasing, mortgaging, or selling the said leasehold messuage or tenement and premises, or any part thereof, for all or any part of the said term of eight years and one quarter of a year wanting ten days; or by bringing actions against the tenants or occupiers of the same premises respectively, for the recovery of the rents, issues, and profits thereof; or by all or any of the ways and means aforesaid; or by such other ways and means as to him or them shall seem meet, levy and raise such sum and sums of money as shall be sufficient, or as he or they shall think fit or expedient to raise for paying and satisfying to the said [*grantee*], her executors, administrators, or assigns, the said annuity, yearly rent, or sum of —— pounds, or such part thereof as shall be so in arrear and unpaid, and all costs, charges, damages, and expenses whatsoever, which the said [*grantee*], her executors, administrators, or assigns, or the said [*trustee*], his executors, administrators, or assigns, or any of them, shall or may sustain, expend or be put to, by reason of the non-payment thereof, or otherwise, in the execution of the trusts of the said terms of five hundred years, and eight years and one quarter of a year wanting ten days, respectively. AND do and shall pay and apply the money so to be levied and raised, or a competent part thereof, in or towards payment and satisfaction of the said arrears, costs, charges, and expenses accordingly: *And* pay the surplus or residue thereof (if any), unto the said [*grantee*], his heirs, appointees, executors, administrators, or assigns, for his and their own proper use and benefit.

and pay the surplus money to grantor.

And upon trust, subject to the said trusts, to permit grantor to receive the rents and profits.

AND UPON FURTHER TRUST, that he the said [*trustee*], his executors, administrators, or assigns, do and shall, from time to time, subject and without prejudice to the trusts hereinbefore declared, permit and suffer the said [*grantor*], his heirs, appointees, executors, administrators, and assigns, to receive and take the rents, issues, and profits of the said messuages, or tenements, lands, hereditaments, and premises, comprised in the said terms of five hundred

years, and eight years and one quarter wanting ten days, *for his and their own proper use and benefit. (*Add agreement, that sales and mortgages shall be valid without grantee's concurrence; and that the receipts of trustee shall be good discharges to purchasers, mortgagees, and persons paying rents,* ut ante, p. 35.) AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth covenant, promise, and agree with and to the said [*grantee*], her executors, administrators, and assigns, by these presents, that he the said, [*grantor*], his executors, administrators, or assigns, shall and will, from time to time, and at all times during the continuance of the said annuity, yearly rent, or sum of —— pounds, at his and their proper costs and charges, insure and keep insured, in the name or names, of the said [*grantee*], (*d*), her executors, administrators, or assigns, in the —— assurance office, or some other office for insurance against fire, in London or Westminster, all the said messuages or tenements and premises hereinbefore charged and demised, or intended so to be, or such of them as shall not be sold by virtue of the trusts aforesaid, from loss or damage by fire, in the sum of, [*the estimated value of the buildings*] pounds at the least; and forthwith deliver the policy or policies, of every such insurance unto the said [*grantee*], her executors, administrators, or assigns. AND *it is hereby agreed and declared* between and by the parties to these presents, that if the said [*grantor*], his executors, or administrators, should at any time, whilst, the said annuity, yearly rent or sum of —— pounds shall be payable, and the said messuages or tenements, and premises, shall remain unsold as aforesaid, refuse or neglect to insure the said sum of —— pounds in the name or names of the said [*grantee*], her executors, administrators, or assigns, or to deliver the policy or policies of every such insurance unto her or them as aforesaid; then and so often as the same shall happen, it shall and may be lawful for the said [*grantee*], her executors, administrators, or assigns in like manner to insure and keep insured the said sum of —— pounds, or any less sum, and for such length

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Covenant by grantor to insure the premises in grantee's name against damage by fire, and to deliver policies to grantee.

Agreement that if grantor should neglect to insure or to deliver policies, that grantee may insure:

(*d*) *Vide* Vol. 1. p. 649.

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of time as she or they shall think proper: AND that it *shall and may be lawful to and for the said [*grantee*], her executors, administrators, or assigns, or the said [*trustee*], his executors, administrators, or assigns, from time to time, to levy and raise, and pay the costs, charges, and expenses of making and keeping on foot such insurances (*e*), by such and the same ways and means, and in such and the same manner, as hereinbefore is provided for raising and paying the said annuity, yearly rent, or sum of —— pounds: AND that all sums of money which shall be recoverable on any such policy of insurance, shall forthwith be laid out and expended in rebuilding or repairing the premises insured, or such of them as may be destroyed or injured by fire, in order the better to secure the due payment of the said annuity, yearly rent, or sum of —— pounds. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby further covenant, promise and agree, with and to the said [*grantee*], her executors, administrators, or assigns, in manner following; that is to say: that he the said [*grantor*], his heirs executors, administrators, or assigns, shall and will well and truly pay or cause to be paid unto the said [*grantee*], her executors administrators or assigns, for and during the said term of ninety-nine years, if the said [*grantee*], [*nominee*], and [*other nominee*], or the survivors or survivor of them should so long live, the said annuity, yearly rent, or sum of —— pounds, clear of all deductions and expenses whatsoever, as and when the same shall become due and payable as aforesaid, by virtue of, and according to the true intent and meaning of these presents. AND ALSO that he the said [*grantor*], his executors or administrators, shall and will, at all times during the continuance of the said term of eight years and one quarter of a year wanting ten days, pay the yearly rent, and perform, fulfil, and keep all and every the covenants and agreements in the hereinbefore in part recited indenture of lease of the —— day of ——, 18—, reserved and contained on the part of the tenant or lessee, henceforth to

and that grantee or trustee may raise the costs of insurances by same means and ways as annuity.

That monies recoverable on policies shall be expended in rebuilding.

Covenant by grantor to pay an annuity for ninety-nine years, if any or either of three nominees should so long live:

and to pay the rent and perform the covenants of the original lease;

[(*e*) "not exceeding in the whole the sum of 50*l.*"
Vide post, Vol. 5, p. 243.]

be performed: And from the same rent, covenants, and agreements, and all costs and expenses on account of any breach, neglect, or default of or in payment or performance thereof as aforesaid, shall and will keep indemnified *the said [*grantee*], her executors, administrators, and assigns, and her and their lands, tenements, goods, and chattels respectively. And that he the said [*grantor*] now hath in himself good right, full power, and lawful and absolute authority to grant and confirm the said annuity, yearly rent, or sum of —— pounds, and the said powers and remedies for compelling payment thereof as aforesaid; and to charge the same upon all and singular the messuage, tenements, lands, hereditaments, and premises, hereinbefore mentioned; and also, to grant, bargain, sell, and demise the said premises unto the said [*trustee*], his executors, administrators, and assigns, for the said terms of five hundred years, and eight years and one quarter of a year wanting ten days respectively, upon the trusts aforesaid, and according to the true intent and meaning of these presents. And that all and singular the said freehold messuages, tenements, lands, and hereditaments, shall during the said term of ninety-nine years, if the said [*grantee*], [*nominee*], and [*other nominee*], or the survivors or survivor of them should so long live, remain, continue, and be charged with and subject to the said annuity, yearly rent, or sum of —— pounds; and subject and liable to the distress and distresses, entry and entries of the said [*grantee*], her executors, administrators, and assigns, for recovering the same, and for all costs, charges, and expenses to be occasioned by the non-payment thereof. And that the said freehold and leasehold premises respectively, shall and may be held, possessed, occupied, and enjoyed by the said [*trustee*], his executors, administrators, and assigns, for the said terms of five hundred years, and eight years and one quarter of a year wanting ten days respectively, upon the trusts aforesaid, and according to the true intent and meaning of these presents. And that free and clear, and freely and clearly, and absolutely exonerated, and for ever discharged, or by the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended,

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and indemnify grantee therefrom;

That grantor has title to grant annuity, and to demise freehold and leasehold premises;

That the freehold premises shall, during the determinable term of 99 years, remain charged with annuity, &c.

That freehold and leasehold premises shall during both terms be held upon the trusts aforesaid:

For acquittal and indemnity from incumbrances.

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For further assurance.

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kept harmless, and indemnified, of, from, and against all charges and incumbrances whatsoever. And further that he the said [*grantor*], and all and every other persons and person whosoever, having, or lawfully * or equitably claiming, or who shall or may have, or lawfully or equitably claim, any estate, right, title, or interest, legal or equitable, in, to, or out of, the said messuages or tenements, lands, hereditaments, and premises, hereby charged and granted, bargained, sold, and demised respectively as aforesaid, or any of them, or any part or parts thereof, shall and will, at any time or times hereafter, upon every reasonable request of the said [*grantee*], her executors, administrators, or assigns, but at the proper costs and charges of him the said [*grantor*], his heirs, executors, or administrators, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, conveyances and assurances in the law whatsoever, for the further, better, and more effectually charging the said freehold messuages, or tenements, lands and hereditaments, with the said annuity, yearly rent, or sum of —— pounds, and with such powers and remedies for recovering and enforcing payment thereof as aforesaid; and also for the further, better, and more effectually granting, bargaining, selling, demising, assuring, and confirming the said freehold or leasehold premises respectively unto the said [*trustee*], his executors, administrators, or assigns, for the residue which shall be then to come and unexpired of the said terms of five hundred years, and eight years and one quarter wanting ten days respectively, upon the trusts aforesaid, according to the true intent and meaning of these presents: *As* by the said [*grantee*], her executors, administrators, or assigns, or her or their counsel in the law, shall be reasonably devised, or advised and required. (*Add declaration, that agreements, deeds, &c. of trustee shall be valid, whether grantor shall, or shall not assent thereto: trustee's receipts to be sufficient discharges: indemnity to persons paying him money,* ut post, p. 174—5: *and trustee not to be answerable for involuntary loss,* ut post, p. 178.)

Third Testatum. And this indenture further witnesseth, *and it is*

hereby declared and agreed, &c. (Add proviso as to judgment; and proviso for acknowledging satisfaction "after the determination of the said term of ninety-nine years, determinable as aforesaid, and full payment," &c. *ut ante*, p. 41—42.) *And this indenture further witnesseth, and the said [*grantee*] doth hereby for herself, her heirs, executors, administrators, and assigns, covenant, promise, and agree, with and to the said [*grantor*], his heirs, executors, administrators, and assigns, that in case the said [*grantor*], his heirs, executors, administrators, or assigns, should be minded or desirous of repurchasing the said annuity, yearly rent, or sum of —— pounds, at any time after the —— day of ——, which will be in the year 18—; she the said [*grantee*], her executors, administrators, or assigns, shall and will, at any time after the said —— day of ——, 18—, on receiving of and from the said [*grantor*], his heirs, executors, administrators, or assigns, full payment of the said annuity, yearly rent, or sum of —— pounds, and all arrears thereof; together with a proportional part of the said annuity, yearly rent, or sum, (in case such repurchase should be made on any other day than one of the said quarterly days of payment,) for the time which shall have elapsed, of the then current quarter of a year, up to and including the day of such repurchase; and all and every sums and sum of money, if any, which shall be then due, for, or on account of any costs, charges or expenses, occasioned by the nonpayment of the same annuity, yearly rent, or sum, accept and take for the repurchase of the said annuity or yearly sum of —— pounds, such sum of money as hereinafter is mentioned; that is to say, if the said [*grantor*], his heirs, executors, administrators, or assigns, should have given the said [*grantee*], her executors, administrators, or assigns, three calendar months' previous notice in writing, of his or their intention to make such repurchase as aforesaid, then the sum of [*original purchase money*] pounds, of lawful money of Great Britain; but if the said [*grantor*], his heirs, executors, administrators, or assigns, should not have given such three calendar months' previous notice in writing, of his or their intention to make such repurchase,

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Proviso as to judgment, &c.

Fourth Testatum.

Power to repurchase after a given time, on paying original purchase money, and giving three months' notice, or paying one quarter's annuity in addition.

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then, and in such last mentioned case, the sum of [*original purchase money, and one quarter's annuity*] pounds of like lawful money: AND the said [*grantee*], her executors, administrators, or assigns, and the said [*trustee*], his executors, administrators, or assigns, shall * and will thereupon, at the proper costs and charges in the law of the said [*grantor*], his heirs, executors, administrators, or assigns, release, assign, or otherwise dispose of the said annuity, yearly rent, or sum of —— pounds, and the said hereditaments and premises, and all other securities for the same, unto the said [*grantor*], his heirs, executors, administrators, or assigns, or to such other person or persons as he or they shall in that behalf nominate or appoint. AND WHEREAS, by indenture bearing date on or about the —— day of ——, 18—, and made or expressed to be made between [*mortgagor*], therein described, of the one part, and [*mortgagee*], therein also described, of the other part, for the considerations therein mentioned, the said [*mortgagor*], did grant, bargain, sell, and demise unto the said [*mortgagee*], *All those* the said freehold messuages or tenements, lands, and hereditaments hereinbefore particularly mentioned: *To hold* the same unto the said [*mortgagee*], his executors, administrators, and assigns, from the day next before the day of the date thereof, for the term of five hundred years: *subject nevertheless* to a proviso or condition therein contained, for redemption of the said messuages or tenements, lands, and hereditaments, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*mortgagee*], his executors, administrators, or assigns, of —— hundred pounds, and interest, on the —— day of —— then next (*f*). AND WHEREAS default was made in payment of the said sum of —— hundred pounds and interest, on the day appointed for payment thereof by the said recited indenture. AND WHEREAS by indenture bearing date on or about the —— day of ——, 18—, and made or expressed to be made between the said [*mortgagee*], of the first part; the said [*mortgagor*], of

On repurchase, grantee and trustee to assign annuity and premises and the securities unto grantor, or as he shall appoint.

Recital of creation of a mortgage term.

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Recital of default in paying mortgage money and interest.

Recital of assignment of mortgage term, in trust to attend the reversion.

(*f*) For other recitals, see INDEX TO PRECEDENTS, title, "ASSIGNMENT OF ATTENDANT TERMS."

the second part: [*grantor*], of the third part; and the said [*trustee of term*], of the fourth part; for the considerations therein mentioned, the said [*mortgagee*] did, by the direction of the said [*mortgagor*], and at the nomination of the said [*grantor*], bargain, sell, and assign *the aforesaid freehold messuages or tenements, lands, and hereditaments, unto the said [*trustee of term*], his executors, administrators, and assigns, for the residue of the said term of five hundred years, *In trust* for the said [*grantor*], his heirs, appointees, and assigns, and to attend the reversion of the same premises. NOW THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and also in consideration of the sum of ten shillings of lawful money of Great Britain to the said [*trustee of term*] paid by the said [*assignee of term*], at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said [*trustee*] at the request, and by the direction of the said [*grantor*], and on the nomination of the said [*grantee*], testified by their respectively sealing and delivering these presents, *hath* bargained, sold, assigned, transferred, and set over; and by these presents *doth* bargain, sell, assign, transfer, and set over unto the said [*assignee*], his executors, administrators, and assigns, ALL THOSE the said freehold messuages or tenements, lands, and hereditaments, and all other the premises hereinbefore described, which are comprised in the said term of five hundred years, created by the said recited indenture of —— day of —— 18—; together with their and every of their rights, members, and appurtenances. AND all the estate, right, title, interest, term and terms for years yet to come and unexpired, property, possession, benefit, claim, and demand whatsoever, of the said [*trustee*], in, to, or out of the said messuages or tenements, lands, and hereditaments, and every part thereof. TO HAVE AND TO HOLD the said messuages, or tenements, lands, and hereditaments, and other the premises hereinbefore assigned, or expressed, and intended so to be, with their appurtenances, unto the said [*assignee*], his executors, administrators, and assigns, henceforth for and during all the rest, residue, and remainder of the said

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Fifth Testatum.

Assignment by trustee to assignee of

freehold parcels.

And all the estate, &c.

Habendum, for residue of term:

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term of five hundred years, therein granted and demised by the said recited indenture of the —— day of —— 18—, and now to come and unexpired: *Nevertheless* UPON TRUST in the first place, for further and better securing to the said [*grantee*], her executors, administrators, and assigns, the payment of *the said annuity, yearly rent, or sum of —— pounds; *And* to assign and dispose of the same term accordingly, as the said [*grantee*], her executors, administrators, or assigns, shall direct or appoint: *And* subject thereto, IN TRUST for the said [*grantor*], his heirs, appointees, and assigns; *And* to permit the residue of the said term of five hundred years to wait upon and attend the reversion, freehold, and inheritance of the premises, therein comprised, so as to be subservient thereto, and to protect the same from all mesne incumbrances, if any such there be. (*Add a covenant from* trustee *with* assignee, *that he hath not incumbered*, ut ante, Vol. 1, p. 434, post, p. 335.) IN WITNESS, &c.(*g*).

upon trust for better securing annuity:

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and to assign term as grantee shall appoint:

and subject thereto in trust for grantor; and to attend the reversion, &c.

Memorial.

(*g*) Unless the clear annual value of the *freehold* property, charged with the payment of the annuity, be of equal or greater annual value than the annuity granted, so as to be within the exception in the act, *ante*, Vol. 1, p. 335, a memorial of the deed must be inrolled. [Indeed it is in general not prudent to rely upon this exception in the Act, as incumbrances may have been secretly created by the grantor reducing the annual value below that of the annuity.]

GRANT OF THREE ANNUITIES TO ONE PERSON, DEMISE ON TRUSTS FOR SALE, &c.

*GRANT *of* THREE *several* ANNUITIES *of equal amount, to the same Grantee: one of them for ninety-nine Years, if two nominees should so long live; another of them for one hundred Years, if the same Nominees should so long live; and the other of them for one hundred and one Years, if one Nominee should so long live:* CHARGED *on Premises of which the Grantor is seised in fee.* DEMISE *of the Premises to a Trustee, for five hundred Years:* UPON TRUST *after Annuities shall be in arrear, out of the Rents, or by demising, leasing, mortgaging or selling the Premises, or by bringing Actions against the Tenants, &c. to raise Sums sufficient to pay Arrears, and all Costs.* POWER *to* REPURCHASE *the three Annuities, or any one or more of them, on giving six months' Notice, paying all Arrears, &c. and transferring into the Grantee's Name —— Pounds Three per cent. Consols, for each Annuity.*

THIS INDENTURE, made the —— day of ——, in the year of our Lord, 18—, BETWEEN [*grantor*], of, &c. of the first part; [*grantee*], of, &c. of the second part; [*trustee*], of, &c. of the third part. WHEREAS (*a*)

Parties.

Recital of being seised in fee.

(*a*) If the grantor be seised for life only, the deed or will creating the estate may be recited, *ut ante*, p. 2: or if it be the case, thus:—

LIFE ESTATE.

"WHEREAS under and by virtue of the last will and testament of [*testator*], late of, &c. deceased, bearing date on or about the —— day of —— 18—; and by virtue of a deed poll of [*married woman, having a power of appointment*], deceased, late the wife of the said [*grantor*], bearing date on or about the —— day of —— 18—, and

Recital of being seised for life under a will, and an appointment by a married woman.

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*the said [*grantor*], is seised of, or intitled to the messuage or tenements, lands, and hereditaments, hereinafter particularly mentioned, and intended to be hereby charged, and granted, bargained, sold, and demised, with their appurtenances, for an estate of an inheritance in fee simple in possession (*b*). AND WHEREAS the said [*grantor*], hath contracted and agreed with the said [*grantee*], for the

Recital of contract for sale of three several annuities, of equal amount.

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the last will and testament, or appointment in the nature of a will, of the said [*married woman*], bearing date on or about the —— day of —— 18—, the said [*grantor*], is seised of, or entitled to the messuage or tenements, lands, and hereditaments, hereinafter particularly described, and intended to be charged for and during the term of his natural life."

Or the recital may be made shortly, thus:

Recital of grantor being seised for life.

"WHEREAS the said [*grantor*] is seised of, or entitled to the messuages and other hereditaments hereinafter particularly mentioned, with their appurtenances, for an estate of freehold [in possession] for the term of his natural life (without impeachment for any manner of waste.")

[If the grantor be seised for life in remainder, say,

FOR LIFE IN REMAINDER.

"Remainder for the term of his natural life (without impeachment for any manner of waste), expectant upon the determination of two previous estates therein for the respective lives of [*father*] and [*mother*], the father and mother of the said [*grantor*]."

Or if it be the case recite, *ut ante*, p. 6, or p. 105.

If the grantor be seised for life only, the annuity must be granted for a term which will determine with his life, *ut ante*, p. 12: the demise to the trustee should be made for ninety-nine years, if the grantor should so long live; and in referring to the term, say,

"the said term of ninety-nine years, determinable as aforesaid."

FEE IN REMAINDER.

[(*b*) If the grantor be seised in fee in remainder, say,

"remainder, expectant upon the determination of a previous estate therein for the life of [*tenant for life*], if," &c.]

absolute sale to him the said [*grantee*], of three several annuities, or clear yearly sums, of —— pounds each; to be respectively paid to the said [*grantee*], his executors, administrators, and assigns, during the respective terms of years hereinafter mentioned; and to be respectively secured as hereinafter is expressed, at or for the price or sum of [*purchase money*] pounds: AND (*c*) on the treaty for the sale of the said annuities, it was agreed between the said [*grantor*] and the said [*grantee*], that all the costs and charges of preparing and perfecting the securities for the said annuities; and of enrolling a memorial thereof in the High Court of Chancery, should be paid and borne by the said [*grantor*]. AND WHEREAS in pursuance and performance of the said agreement on the part of the said [*grantor*], he the said *[*grantee*] hath [*168] paid the sum of [*purchase money*] pounds, of lawful money of Great Britain, in notes of the Governor and Company of the Bank of England, expressed to be payable on demand, and commonly called bank notes, to the said [*grantor*]. AND in pursuance, and part performance of the said agreement, on the part of the said [*grantor*], it is intended and agreed, that he the said [*grantor*] shall, immediately after the sealing and delivery of these presents, execute and give to the said [*grantee*], two several bonds or obligations in writing, bearing even date respectively with these presents: *And* by one of the said bonds, shall become bound to the said [*grantee*] in the sum of [*double two thirds of the purchase money*] pounds of lawful money of Great Britain; with a condition to be thereunder written, for making void the same on payment by the said [*grantor*], his heirs, executors, or administrators, to the said [*grantee*], his executors, administrators, or assigns, of the two several annuities of —— pounds, and —— pounds *(two annuities of equal amount)* hereinafter granted, and made payable respectively, for and during the respective terms of ninety-nine years, and one hundred years, determinable respectively on the decease of the survivor of [D] and [E] (two of the daughters of the said [*grantee*]), at the times,

GRANT OF THREE ANNUITIES TO ONE PERSON, DEMISE ON TRUSTS FOR SALE, &c.

Recital of having paid consideration money.

Recital that grantor shall give two several bonds;

and by one of them secure two of the annuities;

(*c*) *Vide* Vol. 1, p. 460, (*b*).

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and in manner hereinafter mentioned and appointed, for the payment thereof respectively: *And* by the other of the said bonds, shall become bound to the said [*grantee*], in the sum of [*double one third of the purchase money*] pounds, of like lawful money; with a condition to be thereunder written, for making void the same, on payment by the said [*grantor*], his heirs, executors, or administrators, to the said [*grantee*], his executors, administrators or assigns, of the annuity of [*another annuity of equal amount*] pounds, hereinafter granted, and made payable for and during the term of one hundred and one years, determinable on the decease of [F], (another of the daughters of the said [*grantee*]), at the times, and in the manner hereinafter mentioned and appointed for the payment thereof. NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement, on the *part of the said [*grantor*]; and in consideration of the said sum of [*purchase money*] pounds, of lawful money of Great Britain, to the said [*grantor*], by the said [*grantee*] paid, as hereinbefore is mentioned; the receipt whereof the said [*grantor*] doth hereby acknowledge; and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*grantee*], his heirs, executors, administrators, and assigns; *He* the said [*grantor*] *Hath* given, granted, bargained, sold, and confirmed, and by these presents *Doth* give, grant, bargain, sell, and confirm, unto the said [*grantee*], his executors, administrators, and assigns, THREE several annuities, yearly rents, or sums of —— pounds each, of lawful money of Great Britain, to be respectively paid and payable during the terms and times, and in the manner hereinafter mentioned; that is to say; *One* of the said annuities, yearly rents, or sums of —— pounds, to be paid and payable for and during the term of ninety-nine years, to commence and to be computed from the day next before the day of the date of these presents, and thenceforth next ensuing, and fully to be complete and ended, *If* the said [D] and [E], or the survivor of them, should so long live: *One other* (*d*) of the

and by the other of them, secure the remaining annuity.

First Testatum.

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Grant of three several annuities of equal amount:

one of them for 99 years, if two nominees should so long live:

one other of them, for 100

(*d*) It is for the benefit of the grantor, that these two annuities deter-

said annuities, yearly rents, or sums of —— pounds, to be paid and payable for and during the term of one hundred years, to commence and be computed from the day next before the day of the date of these presents, and thenceforth next ensuing, and fully to be complete and ended, *If* the said [D] and [E], or the survivor of them, should so long live: *And the other* of the said annuities, yearly rents, or sums of —— pounds, to be paid and payable, for and during the term of one hundred and one years, to commence and be computed from the day next before the day of the date of these presents, and thenceforth next ensuing, and fully to be complete and ended, *If* the said [F] should so long live. * And all the said annuities, yearly rents, or sums of —— pounds, to be chargeable upon and yearly issuing and payable out of ALL that messuage or tenement, lands and hereditaments, situate, &c. &c. AND out of and upon all and singular houses, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, woods, underwoods, and appurtenances, to the said messuage or tenements, lands, and hereditaments belonging, or in any wise appertaining: AND ALSO upon and out of the reversion and reversions, remainder and remainders, yearly and other rents and profits, of the said messuage or tenement, lands, and hereditaments, hereby charged, or made chargeable with the payment of the said annuities, yearly rents, or sums of —— pounds: and upon and out of every part and parcel of the same, with their and every of their appurtenances. To HAVE, hold, receive and take the said annuities, yearly rents, or sums of —— pounds each unto the said [*grantee*], his executors, administrators, and assigns, henceforth, for and during the terms of years hereinbefore respectively mentioned, for the payment of the said several annuities, yearly rents, or sums of —— pounds respectively. *And* the same annuities, yearly rents, or sums of —— pounds, to be respectively paid, and payable by four even or equal payments, on the

GRANT OF THREE ANNUITIES TO ONE PERSON, DEMISE ON TRUSTS FOR SALE, &c.

years, if the same nominees should so long live:

and the other of them, for 101 years, if one nominee should so long live.

All the annuities to be chargeable upon parcels; upon all houses, &c.

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and upon the reversion, &c.

Habendum for said terms of years:

payable quarterly, without any deduction.

minable on the death of the same nominees, are not granted as one annuity; because the power at page 178, enables the grantor to repurchase the three annuities, or any of them or more of them.

GRANT OF THREE ANNUITIES TO ONE PERSON, DEMISE ON TRUSTS FOR SALE, &c.

—— day of ——, &c. in every year, without any deduction or abatement whatsoever out of the same respectively, or any part thereof respectively, on account, or in respect of any taxes, charges, assessments, or impositions, already taxed, charged, assessed, or imposed, or to be hereafter taxed, charged, assessed, or imposed, upon the hereditaments hereby charged with the payment of the said annuities, yearly rents, or sums of —— pounds, or on the said [*grantee*], his executors, administrators, or assigns, or any other person or persons whomsoever, by authority of parliament, or otherwise howsoever, or on account, or in respect of any other matter, cause, or thing whatsoever. The first quarterly payment of the said annuities of —— pounds, and —— pounds, hereinbefore respectively granted, and made payable during the said terms of ninety-nine years and one hundred years respectively, determinable *respectively as aforesaid, to be made on the —— day of ——, next ensuing the date of these presents, if the said [D.] and [E.], or either of them, should be then living: and if the survivor of them the said [D.] and [E.], should depart this life on any other day than one of the said quarterly days of payment, a proportional part of the same annuities, yearly rents, or sums of —— pounds, and —— pounds respectively, to be paid to the said [*grantee*], his executors, administrators, or assigns, immediately after the decease of the survivor of them, the said [D.] and [E.], for the time which such survivor shall have lived, of the then current quarter of a year, including the day of her decease. And the first quarterly payment of the said annuity of —— pounds hereinbefore granted, and made payable during the said term of one hundred and one years, determinable as aforesaid, to be made on the —— day of ——, next ensuing the date of these presents, if the said [F.] should be then living: and if the said [F.] should depart this life on any other day than one of the said quarterly days of payment, a proportional part of the same annuity, yearly rent, or sum of —— pounds, to be paid to the said [*grantee*], his executors, administrators, or assigns, immediately after the decease of the said [F.], for the time which she the said [F.] shall have lived, of the then

The first quarterly payment of the two annuities payable during the determinable terms of 99 and 100 years, to be made on, &c. if the two nominees, or either of them, be then living: and a proportional part to the death of the survivor.

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And the first quarterly payment of the annuity payable during the determinable term of 101 years, to be made on, &c. if the nominee be then living; and a proportional part to her death.

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current quarter of a year, including the day of her decease. AND the said [*grantor*] doth hereby for himself, his heirs, and assigns, grant, covenant, and agree to and with the said [*grantee*], his executors, administrators, and assigns, in manner following; that is to say; that if the said three several annuities, yearly rents, or sums of —— pounds each, or any of them, or any part thereof respectively, should be in arrear, or unpaid, for the space of twenty-one days next after any of the said days or times whereon the said three several annuities, yearly rents, or sums respectively, ought to be paid as aforesaid; then, and as often as it shall so happen, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, or assigns, to enter into, and distrain upon all or any part of the said hereditaments hereby charged with the said three several annuities, yearly rents, or sums of —— pounds each; and to sell and dispose of the distress *and distresses then and there taken; or otherwise to demean therein, according to law, in like manner as in distresses taken for rent, reserved by lease, or common demise; to the end and intent, that he the said [*grantee*], his executors, administrators, and assigns, may be fully paid and satisfied the said three several annuities, yearly rents, or sums of —— pounds each, so in arrear and unpaid, and every part thereof respectively; and all costs, charges, and expenses, occasioned by the non-payment of the same. AND ALSO, that in case the said three several annuities, yearly rents, or sums of —— pounds each, or any of them, or any part thereof respectively, should at any time or times hereafter be in arrear, and unpaid, by the space of thirty-one days next after any of the days or times whereon the said respectively ought to be paid as aforesaid; then, and from time to time, as often as it shall so happen, (although no legal demand should have been made thereof,) it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, to enter into and upon, and to hold all and singular the hereditaments hereby charged with the payment of the said three several annuities, yearly rents, or sums of —— pounds each, or any part or parts thereof; and to receive and take the rents, issues, and profits thereof, to and for

Power of distress for securing three several annuities of equal amount.

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Power of entry for securing three several annuities of equal amount.

GRANT OF THREE ANNUITIES TO ONE PERSON, PREMISE ON TRUSTS FOR SALE, &c.

his and their own use, until he or they shall therewith, or thereby, or otherwise, be fully paid and satisfied the arrears of the said three several annuities, yearly rents, or sums of —— pounds each, and every part thereof respectively, due at the time of such entry, and which shall afterwards accrue and become due, during his or their being in possession of the same premises; together with all such costs, charges, damages, and expenses whatsoever, which he or they shall sustain, by reason of the non-payment thereof: and such possession, when taken, to be without impeachment of waste. AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said sum of [*purchase money*], by the said [*grantee*] paid to the said [*grantor*], as hereinbefore is mentioned; and for the more effectually securing the payment of the said annui-

[*173] *ties, yearly rents, or sums of —— pounds each, to the said [*grantee*], his executors, administrators, and assigns; and in consideration of the sum of ten shillings of lawful money of Great Britain, to the said [*grantor*] paid by the said [*trustee*], at or immediately before the sealing and delivery of these presents; the receipt whereof is hereby acknowledged; *He* the said [*grantor*], at the request, and by the direction, and upon the nomination and appointment of the said [*grantee*], testified by his sealing and delivering these presents, *Hath* granted, bargained, sold, and demised; *And* by these presents *Doth* grant, bargain, sell, and demise, unto the said [*trustee*], his executors, administrators, and assigns, THE said messuage or tenement, lands and hereditaments, and all and singular other the premises, hereinbefore charged with the payment of the said three several annuities, yearly rents, or sums of —— pounds, or expressed, and intended so to be, with their and every of their appurtenances. TO HAVE AND TO HOLD the said messuage or tenement, lands, and hereditaments, and all and singular other the premises hereinbefore granted, bargained, sold, and demised, or expressed, and intended so to be, [*subject*], and charged, and chargeable, to and with the said three annuities, yearly rents, or sums of —— pounds each, and the powers and remedies hereinbefore given, for securing the payment thereof respectively,) unto the

Demise to trustee, &c.

parcels hereinbefore charged.

Habendum,

(subject to the three annuities, and the powers, &c.)

GRANT OF THREE ANNUITIES TO ONE PERSON, DEMISE ON TRUSTS FOR SALE, &c.

said [*trustee*], his executors, administrators, and assigns, henceforth, for and during the term of five hundred years, to be computed from the day next before the day of the date of these presents, and thenceforth next ensuing, and fully to be complete and ended; without impeachment of or for any manner of waste: UPON THE TRUSTS *nevertheless*, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, and agreements, hereinafter expressed, declared, or contained, of and concerning the same; that is to say, UPON TRUST, that he the said [*trustee*], his executors, administrators, and assigns, do and shall permit the said [*grantor*], his heirs and assigns, to receive and take the rents, issues, and profits, of the said messuage or tenement, lands, and * hereditaments, until the said annuities, yearly rents, or sums of —— pounds each, or some, or one of them, or some part thereof respectively, shall be in arrear and unpaid by the space of forty days next after the same ought to be paid as aforesaid. AND when, and so often, as the said annuities, yearly rents, or sums of —— pounds each, or any of them, or any part thereof respectively, shall be in arrear or unpaid by the space of forty days, next after the same respectively shall become payable, do and shall, by and out of the rents, issues, and profits of the said messuage or tenement, lands, and hereditaments; or by demising, leasing, mortgaging, or selling the same premises, or any of them, or any part or parts thereof, for all or any part of the said term of five hundred years; or by bringing actions against the tenants or occupiers of the same premises for the recovery of the rents, issues, and profits thereof; or by more than one of, or by all the ways and means aforesaid; or by such other ways or means as to him or them shall seem meet, levy and raise such sum or sums of money as will be sufficient, or as he or they shall think expedient or proper to raise, for paying and satisfying, to the said [*grantee*], his executors, administrators, or assigns, the said annuities, yearly rents, or sums of —— pounds each, or such of them, or such part or parts thereof respectively, as shall be so in arrear and unpaid; and all costs, charges, and expenses whatsoever, which the said [*grantee*], or the

to trustees for 500 years,

upon the trusts, &c. hereinafter contained, *viz.*

upon trust to permit grantor to receive the rents, until annuities be in arrear 40 days.

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And when annuities shall be in arrear 40 days, out of rents, or by demising, leasing, mortgaging, or selling premises, or by bringing actions against the tenants, &c. to raise sums sufficient to pay arrears, and all costs.

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said [*trustee*], or either of them, their, or either of their executors, administrators or assigns, shall or may sustain, expend, or be put unto, by reason of the nonpayment thereof, or otherwise, in the execution of the trusts of the said term of five hundred years. AND do, and shall, for the purposes aforesaid, or any of them, enter into, make, and execute, all such covenants, contracts, agreements, assignments, assurances, deeds, acts, matters, or things, which to the said [*trustee*], his executors, administrators, or assigns, shall seem reasonable. AND *it is hereby agreed and declared* between and by the parties to these presents, that all and singular such covenants, contracts, agreements, assignments, assurances, deeds, acts, matters, and things, which shall be entered [*175] *into, executed, had, made, or done by the said [*trustee*], his executors, administrators, or assigns, by virtue of these presents, shall and may be entered into, executed, had, made, or done, either with, or without the concurrence of the said [*grantor*], his heirs, or assigns; and shall, whether the said [*grantor*], his heirs or assigns, shall or shall not join therein, or assent thereto, be to all intents, effects, constructions, and purposes whatsoever, completely valid and effectual, and bind him the said [*grantor*], his heirs, and assigns, and all persons claiming, or to claim, by, from, under, or in trust for him, them, or any of them (*d*). AND that the receipt or receipts in writing, of the said [*trustee*], his executors, administrators, or assigns, for any sum or sums of money payable to him or them in the execution of the trusts aforesaid, shall be a sufficient and effectual discharge, or sufficient and effectual discharges, for the same respectively, or so much thereof respectively as in such receipt or receipts respectively shall be expressed or acknowledged to be received. AND that the person or persons, to whom the same shall be given, his, her, or their, heirs, executors, administrators, or assigns, shall not afterwards be answerable, or accountable, for any loss, misapplication, or nonapplication, or be in anywise obliged, or concerned, to

And for those purposes to make agreements, deeds, &c.

Agreements, deeds, &c. of trustee to be valid, whether grantor shall, or shall not, assent thereto.

Trustee's receipts to be sufficient discharges;

and indemnity to persons paying him monies.

(*d*) Under this deed, the trustee can convey a good title to a purchaser, without the grantor's concurrence. *Vide* Vol. 1, p. 569, (*e*).

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see to the application of the monies therein mentioned, and acknowledged to be received; nor shall he or they be bound to ascertain or inquire into the necessity or propriety of any sale, mortgage, or other disposition, or the collection of rents and profits which shall be made by the said [*trustee*], his executors, administrators, or assigns. AND *it is hereby agreed and declared*, that the said [*trustee*], his executors, administrators, and assigns, do and shall pay and apply the money so to be levied or raised, or a competent part thereof, in or towards the satisfaction of the aforesaid arrears, costs, charges, and expenses accordingly; and the surplus or residue thereof, if any, unto the said [*grantor*], his heirs or assigns, to and for his or their own use and benefit. PROVIDED *ALWAYS, *and it is hereby agreed and declared* between and by the parties to these presents, that after the decease of all of them, the said [D.], [E.], and [F.]; and after payment of all the arrears of the said annuities, yearly rents, or sums of —— pounds, —— pounds, and —— pounds respectively; and when all costs, charges, and expenses occasioned by the nonpayment thereof respectively, or by the trusts of the said term of five hundred years shall be fully paid and satisfied; then and immediately thereupon, the said term of five hundred years shall (subject, and without prejudice to any sale, mortgage, or other disposition, which shall have been made of the same, in pursuance of the trusts aforesaid,) absolutely cease, determine, and be void. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with and to the said [*grantee*], his executors, administrators, and assigns, in manner following; that is to say, that he the said [*grantor*], his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, during the said several and respective terms of ninety-nine years, one hundred years, and one hundred and one years, determinable respectively as aforesaid, the said several annuities, yearly rents, or sums of —— pounds hereinbefore respectively granted, or expressed and intended so to be, clear of all deductions and re-

Trustee to pay money raised, in or towards satisfaction of arrears, and costs;

and residue to grantor.

Proviso for cesser of term.

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Covenant for payment of three several annuities for three several determinable terms:

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prisals whatsoever, when and as the same shall respectively become due and payable as aforesaid, by virtue of, and according to the true intent and meaning of these presents. AND ALSO that he the said [*grantor*] now hath in himself good right, full power, and lawful and absolute authority, to grant and confirm the said annuities, yearly rents, or sums of —— pounds each, and the said powers and remedies for recovering and compelling payment thereof respectively as aforesaid; and to charge the same respectively upon all and singular the said messuage or tenement, lands, and hereditaments, hereinbefore mentioned: and also to grant, bargain, sell, and demise the same messuage or tenement, lands, and hereditaments, unto the said [*grantee*], his executors, administra- [*177] *tors and assigns, for and during the said term of five hundred years, in manner aforesaid, and according to the true intent and meaning of these presents. AND that all and singular the said messuage or tenement, lands, and hereditaments, shall, during the said term of ninety-nine years, one hundred years, and one hundred and one years respectively, determinable as aforesaid, remain, continue, and be charged with, and subject to, the said annuities, yearly rents, or sums of —— pounds each, and subject and liable to the distress and distresses, entry and entries, of the said [*grantee*], his executors, administrators, and assigns, for the recovery of the same respectively, and for all costs, charges, and expenses to be occasioned by the non-payment thereof respectively: and shall and may be held, possessed, occupied, and enjoyed, by the said [*trustee*], his executors, administrators, and assigns, for the said term of five hundred years, upon the trusts, and in manner aforesaid, and according to the true intent and meaning of these presents: AND that respectively free and clear, and freely, clearly, and absolutely exonerated and discharged, or by the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all charges and incumbrances whatsoever. AND FURTHER, that he the said [*grantor*], and his heirs, and all other persons whomsoever, having or claiming, or who shall or may at any time or times hereafter have or

for title;

that premises, shall during the three terms respectively, remain subject to annuities and to powers of distress and entry;

and be held by trustee for the term of 500 years, upon said trusts;

free from incumbrances:

and for further assurance.

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claim, any estate, right, title, or interest, legal or equitable, in, to, or out of the said messuage or tenement, lands, and hereditaments, hereby charged and granted, bargained, sold, and demised, or expressed and intended so to be, shall and will, at any time or times hereafter, upon every reasonable request of the said [*grantee*], his executors, administrators, or assigns, but at the proper costs and charges of the said [*grantor*], his heirs or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, and things whatsoever, for the further, better, and more effectually charging the said messuage or tenement, lands, and hereditaments, with the said annuities, yearly rents, *or sums of —— pounds each, and with such powers [*178] and remedies, for recovering and enforcing payment thereof respectively as aforesaid; and also for the further, better, and more effectually granting, bargaining, selling, assuring, and confirming, the said messuage or tenement, lands, and hereditaments, unto the said [*grantee*], his executors, administrators, and assigns, for the residue which shall be then to come and unexpired of the said term of five hundred years, upon the trusts aforesaid, and according to the true intent and meaning of these presents; *As* by the said [*grantee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised, or devised, and required. PROVIDED ALWAYS, *and it is hereby declared and agreed*, that the said [*trustee*], his executors, administrators, and assigns, shall not be answerable, or accountable, for any involuntary loss or damage that may happen in the execution of the trusts of the aforesaid term of five hundred years. AND THIS INDENTURE ALSO WITNESSETH, and the said [*grantee*] for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with and to the said [*grantor*], his heirs, executors, administrators, and assigns, that in case the said [*grantor*], his heirs, executors, administrators, or assigns, should at any time or times hereafter, during the continuance of the said several annuities, yearly rents, or sums, hereinbefore granted, or any of them, be minded or desirous of

Trustees not to be answerable for involuntary loss.

Third Testatum.

Power to repurchase the three annuities, or any one or more of them, on giving six months' notice, paying all arrears, &c. and transferring into grantee's

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repurchasing the same several annuities, yearly rents, or sums, or any one or more of them; and of such his or their intention should give notice in writing to the said [*grantee*], his executors, administrators, or assigns; then, and in every or any such case, and so often as the same shall happen, the said [*grantee*], his executors, administrators, or assigns, shall and will, at the end of six calendar months, next after the day on which such notice shall be so given, on receiving of and from the said [*grantor*], his heirs, executors, administrators, or assigns, all and every sums and sum of money whatsoever, which shall be then due, for or on account of the arrears of the annuity, yearly rent, or sum, or annuities, yearly rents, or sums which shall be so repurchased, *including (if the day of the repurchase of the same respectively should not be one of the said quarterly days of payment) a proportional sum of money, for the days which shall have elapsed of the then quarter of a year; and also all and every sums and sum of money, if any, which shall be then due, for or on account of any costs, charges, or expenses, occasioned by the nonpayment of the same annuity, yearly rent, or sum, or annuities, yearly rents, or sums, accept and take, for the repurchase of each annuity, yearly rent, or sum, so to be repurchased, a transfer of —— pounds three per centum consolidated Bank Annuities, to be made into the name, or names, or to the account of the said [*grantee*], his executors, administrators, or assigns, for his and their proper use and benefit. And that he the said [*grantee*], his executors, administrators, or assigns, and the said [*trustee*], his executors, administrators, or assigns, shall and will, upon every such repurchase of the said annuities respectively, or any of them, as aforesaid, at the request, costs, and charges of the said [*grantor*], his heirs, executors, administrators, or assigns, release, assign, or otherwise dispose of the annuity, yearly rent, or sum, or annuites, yearly rents, or sums, which shall be so repurchased as aforesaid, and the securities for the same respectively (subject nevertheless, and without prejudice, to such one or more, if any, of the said several annuities, as shall not have been repurchased, and shall be then subsisting) unto the said [*grantor*], his heirs, executors,

name —— pounds 3 per cent. consols, for each annuity.

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On repurchase, grantee and trustee to release or assign the annuity purchased, unto grantor, or as he shall appoint.

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administrators, or assigns, or unto such other person or persons as he or they shall in that behalf nominate and appoint; and do any other act, deed, or thing, necessary or advisable, for the avoiding, releasing, assigning, vacating, and discharging, as well the annuity, yearly rent, or sum, or annuities, yearly rents, or sums, which shall be so repurchased, as the several securities given for the payment of the same respectively as aforesaid; *As* by the said [*grantor*], his heirs, executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, or advised, and required: *So* that, for the doing thereof, the said [*grantee*], his executors, administrators, or assigns, or the said [*trustee*], his execu-
*tors, administrators, or assigns, be not compelled, or [*180]
compellable, to go or travel from his, her, or their usual abode or dwelling. IN WITNESS, &c.

GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

GRANT *by Tenant for Life in Possession, and Tenant for Life in Remainder, of* TWO *distinct* ANNUITIES, *to* TWO *different Persons; the first for the Lives of both Grantors,* or *for Ninety-nine years, if they or either of them should so long live; the other for the Life of one of them,* or *for Ninety-nine Years, if he should so long live: collaterally secured by distinct joint and several Bonds, and Warrants of Attorney to confess Judgments on each of the Bonds in* England *and* Antigua; *and charged on a* PLANTATION IN ANTIGUA, subject *to a previous Mortgage and Agreement that the Mortgagees shall receive the Consignments, and out of the Produce, after paying an annual Sum secured thereout, to the Grantors by the Bond of the Mortgagees, retain the residue in liquidation of their Mortgage Debt:* DEMISE *of the plantation to a Trustee for Ninety-nine Years, if either of the Grantors should so long live,* UPON TRUST, *when the annuities or either of them shall be in arrear, out of the Rents and Profits, or by Mortgage, or Sale, &c. of the Plantation, to levy and pay Arrears to Grantees, without priority or preference, with all Costs, &c.* ASSIGNMENT *to the Trustee of the Mortgagees' Bond for paying a yearly Sum to the Grantors,* UPON *the same* TRUSTS *as are declared of the Term of Ninety-nine*

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* *Years:* COVENANT *by both Grantors jointly and severally, with the Trustee in Trust for the Grantees, to employ Mortgagees as Consignees, and in case of their several Deaths, &c. to appoint others to be approved by the*

Grantees; that new consignees shall execute a similar Bond to that assigned; and that new Bond to be also assigned to the Trustee. COVENANT *to appear at* INSURANCE OFFICES, *and to pay additional Premiums for going abroad:* POWER TO REPURCHASE *either Annuity: and* POWER OF ATTORNEY *to acknowledge the Deed in Antigua, in order for it to be registered, and to indorse or annex Schedules, describing the Lands charged, and the Slaves belonging thereto.*

GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

THIS INDENTURE [*of four parts*], made the —— day of ——, [in the, &c. *George* the *Fourth*, &c. and] in the year 18—; BETWEEN [*grantor*] the elder, of, &c. and [*grantor*] the younger, of, &c. of the first part; [*first grantee*], of, &c. of the second part; [*second grantee*], of, &c. of the third part; and [*trustee*], of, &c. of the fourth part. WHEREAS under and by virtue of the last will and testament of [*testator*] deceased, formerly of the island of Antigua, esquire, bearing date on or about the —— day of ——, 18—, and duly executed and attested (*a*) for the devise of lands of inheritance, and proved on or about the —— day of ——, 18—. in the Prerogative Court of the Archbishop of Canterbury, the said [*grantor*] the elder, is seised for his life, at law or in equity, of the plantation and premises hereinafter mentioned and described, with the appurtenances; *With* remainder to the said [*grantor*] the younger, for his life; *Subject* to a mortgage made by the said [*grantor*] the elder, and [*grantor*] the younger, to [*two mortgagees*], both of ——, in the city of London, merchants, *and copartners, of the same plantation and premises, for securing —— pounds, and interest; *And subject* to an agreement that the said [*two mortgagees*] shall yearly and every year, whilst the said mortgage debt remains a charge on the said plantation and premises, receive the

Parties.

Recital that under a will grantor is seised for life of plantation, charged with remainder for life to other grantor:

subject to a mortgage:

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and subject to an agreement, during mortgage, that mortgagees shall receive

(*a*) *Vide* Act of Assembly of Antigua, 26 Geo. III. No. 438, sec. 3, &c. *post*, 233, as to the ceremonies requisite for Devises of Lands, &c. in Antigua.

GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

consignments, and out of produce (after paying grantor's certain yearly sums) retain residue in liquidation of mortgage debt; and that mortgagees shall be employed to receive consignments for five years after principal and interest shall be paid.

Recital of a bond from mortgagees to grantors, for paying to grantors, or the survivor of them, out of the produce a yearly sum, with a proportional part to the death of the survivor.

whole of the consignments from the said plantation, and out of the produce thereof, (after paying to the said [*grantor*] the elder, and [*grantor*] the younger, certain yearly sums, in the proportions therein mentioned,) retain the residue of the produce of the same consignments, in liquidation of the said mortgage debt, and interest, until the same shall be fully repaid and discharged; and shall also be employed to receive the consignments of the said plantation for five years, after the said principal monies and interest shall have been discharged (*b*), or to some such effect. And whereas the said [*two mortgagees*], by their bond or obligation in writing, bearing date on or about the —— day of —— instant, became jointly and severally bound unto the said [*grantor*] the elder, and [*grantor*] the younger, in the sum of —— thousand pounds of lawful money of Great Britain: *And* the said bond is *Conditioned* to be void, if the said [*two mortgagees*], or either of them, their, or either of their heirs, executors, or administrators, should yearly, and every year, out of the sums or produce which from time to time, shall, under and by virtue of certain trusts or agreements in the said bond recited, and hereinbefore mentioned to be payable to the said [*grantor*] the elder, and [*grantor*] the younger, or either of them, retain and take, one clear yearly sum of —— hundred pounds of lawful money of Great Britain, and notwithstanding the said trusts and agreements, or any of them, pay the same yearly sum unto the said [*grantor*] the elder, and [*grantor*] the younger, or to the survivor of them, and their or his assigns, by quarterly payments, to be made on the days, or at the times therein and hereinafter mentioned; that is to say: the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, or as soon after as there shall be produce in hand applicable to that purpose, pursuant to the trusts or agreements in the
[*183] said *bond recited, or any of them. The said yearly sum of —— hundred pounds, to be taken during the joint

[(*b*) It seems doubtful, whether a covenant to continue a mortgagee as consignee, after payment of the debt, is valid. *Bunbury* v. *Winter*, 1 Jacob & Walker, 255. *Vide post*, Vol 5, p. 540.]

GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

lives of the said [*grantor*] the elder, and [*grantor*] the younger, from the sums or produce payable to them respectively, in proportion to the sums payable to them respectively, and after the death of one of them to be deducted and taken from and out of the sum or produce payable to the survivor of them. And the first quarterly payment of the said yearly sum of —— hundred pounds to become due on the —— day of —— next, if the said [*grantor*] the elder, and [*grantor*] the younger, or either of them, should be living at that time, and there should be a fund or produce in hand applicable for that purpose; or otherwise, as soon afterwards as such fund or produce shall be in hand. And in the event of the death of the survivor of them, the said [*grantor*] the elder, and [*grantor*] the younger, between, or in the interval of any one of the first quarterly days of payment, and either before or after the said [*first*] day of [*payment*] next, should also well and truly pay, or cause to be paid, unto the executors, administrators, or assigns, or the survivor of them the said [*grantor*] the elder, and [*grantor*] the younger, out of the sums of money and produce payable to both or either of them the said [*grantor*] the elder, and [*grantor*] the younger respectively, under or by virtue of the said trusts and agreements, such part of the said yearly sum of —— hundred pounds, as shall be in proportion to the time or number of days, which, inclusive of the day of the decease of the survivor of them, the said [*grantor*] the elder, and [*grantor*] the younger, shall have elapsed, prior to the death of such survivor, and after the day of payment next immediately preceding that event. And should make the payment of such proportional part of the said yearly sum of —— hundred pounds as soon after the decease of the survivor of the said [*grantor*] the elder, and [*gruntor*] the younger, as demand shall be made thereof by the executors, administrators, or assigns, of the survivor of the said [*grantor*] the elder, and [*grantor*] the younger, and there shall be produce in hand applicable to that purpose. And should make the payments of the said yearly sum of —— hundred pounds, and *such proportional part thereof as aforesaid, free and clear [*184] of and from all deductions on any account whatsoever.

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And the same payments to be, and be accepted, in part of the yearly or other sums and produce payable to the said [*grantor*] the elder, and [*grantor*] the younger, and each or either of them, out of the yearly sums or produce applicable as in the said bond is mentioned. AND WHEREAS the said [*grantor*] the elder, and [*grantor*] the younger, have contracted and agreed with the said [*first grantee*], to grant to him, his executors, administrators, and assigns, a clear annuity, or yearly sum of [*first annuity*] pounds, of lawful money of Great Britain (*c*), for the several lives of the said [*grantor*] the elder, and [*grantor*] the younger, and the life of the longer liver of them: and the true and *bonâ fide* consideration to be advanced and given for the said annuity, is the sum of [*consideration for first annuity*] pounds. AND WHEREAS the said [*grantor*] the elder, and [*grantor*] the younger, have also contracted and agreed with the said [*second grantee*], to grant to him, his executors, administrators, and assigns, a clear annuity, or yearly sum of [*second annuity*] pounds, of like lawful

Recital of contract for purchasing first annuity.

Recital of contract for purchasing second annuity.

The general practice now is to grant a rent *pour autre vie*, out of freehold estate,

(*c*) The question stated *ante*, Vol. 1, p. 587—596, whether a rent *pour autre vie* out of a freehold estate can be effectually limited to the grantee, his executors, administrators, and assigns, so as to continue after the grantee's death, in case he should make no previous assignment thereof, *ut ante*, Vol. 1, p. 588, *is now generally avoided*, by limiting the annuity or rent-charge thus:

FOR YEARS DETERMINABLE ON DEATH.

"for and during the term of ninety-nine years, if the said [*grantor*] the elder, and [*grantor*] the younger, or either of them should so long live: and the true," &c. *ut supra*.

English common law, the law of Antigua, where not altered by their laws,

This precaution, founded on the common law doctrine of non-occupancy of estates lying in grant, is equally necessary in the above instance, because the English common law is the law of Antigua, so far as it stands unaltered by any of the laws of the island: Act of General Assembly of the Leeward Carribbee Islands, 4 Anne, No. 13, sec. 2, *post*, 222: and the 12th sec. of the English Statute, 29 Car. II. c. 3. (stated *ante*, Vol. 1, p. 589,) is also the law of Antigua; Act of Assembly of Antigua, 31 Geo. III. No. 475, sec. 102, *post*, 238; excepting that wills are to be executed according to the Act of Assembly of Antigua, 26 Geo. III. No. 438, sec. 3, &c. *post*, p. 233.

*money (*d*), for the life of the said [*grantor*] the younger; and the true and *bonâ fide* consideration to be advanced and given for the said annuity of [*second annuity*] pounds, is the sum of [*consideration money for second annuity*] pounds. AND WHEREAS for further securing the payment of the said annuity or yearly sum of [*first annuity*] pounds, the said [*grantor*] the elder, and [*grantor*] the younger, have, by their joint and several bond, or writing obligatory, under their hands and seals, bearing even date with these presents, become bound to the said [*first grantee*], his executors, administrators, and assigns, in the sum of [*double the consideration money for first annuity*] pounds: *subject to a Condition* for making the same bond void on payment to the said [*first grantee*], his executors, administrators, or assigns, of the said annuity, or clear yearly sum of [*first annuity*] pounds, by quarterly payments, during the (*e*) lives of the said [*grantor*] the elder, and [*grantor*] the younger, and the life of the survivor of them: and in case the survivor of the said [*grantor*] the elder, and [*grantor*] the younger, should die between any two of the said quarterly days of payment, then also of a proportional part of the said annuity, or yearly sum of [*first annuity*] pounds, at the times and in manner in the said condition and hereinafter mentioned. AND WHEREAS for further securing the payment of the said annuity, or yearly sum of [*second annuity*] pounds, the said [*grantor*] the elder, and [*grantor*] the younger, have by their joint and several bond, or writing obligatory, under their hands and seals, bearing even date with these presents, become bound to the said [*second grantee*], his executors, administrators, and assigns, in

GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

Recital of joint and several bond of grantors for securing first annuity.

Recital of joint and several bond of grantors for securing second annuity.

(*d*) If for years determinable on the grantor's death, say, "for and during the term of ninety-nine years, if the said [*grantor*], the younger, should so long live: and the true," &c. *ut supra.*

FOR YEARS DETERMINABLE ON DEATH.

(*e*) If for years determinable on death, say, "term of ninety-nine years, if the said [*grantor*] the elder, and [*grantor*] the younger, or either of them, should so long live; and in case," &c. *ut supra.*

FOR YEARS DETERMINABLE ON DEATH.

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*the sum of [*double the consideration money for the second annuity*] pounds: *subject to a Condition* for making the same bond void, on payment to the said [*second grantee*], his executors, administrators, or assigns, of the said annuity, or yearly sum of [*second annuity*] pounds, by quarterly payments, during the (*f*) life of the said [*grantor*] the younger: and in case the said [*grantor*] the younger should die between any two of the said quarterly days of payment, then also of a proportional part of the said annuity, or yearly sum of [*second annuity*] pounds, at the times, and in manner in the said last mentioned condition and hereinafter mentioned. AND as a further security for the payment of the said annuity, or yearly sum of [*first annuity*] pounds, the said [*grantor*] the elder, and [*grantor*] the younger, have by a writing under their hands and seals (*g*), also bearing even date with these presents, authorized [*attorney*], and [*another attorney*], gentlemen, attornies of his Majesty's Court of Common Pleas at Westminster, jointly and severally, or any other attorney of that court, by confession or otherwise, to suffer judgment to be entered up against them in the same court, in an action of debt, upon the said second mentioned bond, at the suit of the said [*first grantee*], his executors, or administrators, for the sum of [*double the consideration money for first annuity*] pounds, and costs of suit. AND the said [*grantor*] the elder, and [*grantor*] the younger, have by a certain other writing under their hands and seals, also bearing even date with these presents, authorized [*attorney*], and [*other attorney*], esquires (*h*), attor-

Recital of warrant of attorney from grantors, for entering up judgment in the Common Pleas at Westminster, on the bond for securing the first annuity.

Recital of warrant of attorney for entering up judgment in the Common Pleas of the island of Antigua, for securing the first annuity.

(*f*) If for years determinable on death, say,

FOR YEARS DETERMINABLE ON DEATH.

" term of ninety-nine years, if the said [*grantor*] the younger should so long live: and in case," &c. *ut supra.*

[(*g*) As to the advantages of *several* warrants of attorney, *vide post*, Vol. 5, p. 483.]

(*h*) As barristers in England are called esquires †, the attornies in all the colonies, excepting Jamaica and Barbadoes, are also called *esquires*,

Attornies in some of the colonies are called *esquires*, because they are both counsel and attornies.

† *Vide* note *infra*, under APPOINTMENT OF GAMEKEEPERS, "Who are esquires."

*nies of the Court of (*i*) Common Pleas (*k*), in the island of Antigua, jointly and severally, or any other attorney of

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because the departments of counsel and attorney are there united. In Jamaica and Barbadoes, where the departments of counsel and attorney are distinct, the attornies are described, as in England, *gentlemen*, in all legal proceedings.

The union of these two branches of counsel and attorney has been productive of much inconvenience; for the practical part has so much employed the attention of the colonial advocates, that few of them have leisure to acquire any considerable degree of knowledge†.

Inconvenience of the union of both branches.

The law practitioners in all the colonies, excepting Jamaica and Barbadoes, are of three sorts; first, gentlemen who have been called to the bar at the Inns of Court in London, or at the King's Inns in Dublin, and who are of course admitted to practise on producing certificates of their having been called; secondly, those who have served clerkships in Great Britain, Ireland, or the colonies; and thirdly, those who through interest are admitted to the bar without any such previous qualification, and who (according to the phrase of the country) are said *to turn lawyers*‡. In Jamaica and Barbadoes, the advocates must have been called to the bar in England or Ireland; but, even in these two islands, it is a usual practice for counsel to communicate immediately with clients, without the intervention of an attorney, and generally to act as much in the same manner as some provincial counsel do in England, and as most of the advocates do at Aberdeen. Although the Act 7 and 8 W. III. c. 24, requiring practitioners of the law to take the oaths of allegiance and supremacy, and to subscribe the declaration against popery, and the

Different qualifications to practise in the colonies.

(*i*) "*or* King's Bench."

King's Bench.

(*k*) "or any other Court of Record,"

† Stokes on the Colonies, 269.

‡ No person is permitted to plead, or practise the law in Antigua, or give advice in any law matter whatsoever, for gain or reward, until he has, *with the approbation* of the Court of Common Pleas there, qualified himself in the same court, by taking the oaths required by act of parliament to be taken by persons in offices or places of trust, and another oath *to act honestly;* Act of Assembly, 31 Geo. III. No. 475, s. 8; or to draw, *in the island,* any conveyance of land, or of negroes, or of any estate, right, or interest therein, for any fee, present, or reward, until he has so qualified himself; Act of Assembly, 53 Geo. III. No. 643; under a penalty of fifty pounds for each offence.

Qualification to practise in Antigua.

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*the same court, by confession or otherwise, to suffer judgment to be entered up against them in the said last mentioned Court, in an action of debt, upon the said second mentioned bond, at the suit of the said [*first grantee*], his executors or administrators, for the sum of [*double the consideration money for the first annuity*] pounds, and costs of suit. AND as a further security for the payment of the annuity, or yearly sum of [*second annuity*] pounds, the said [*grantor*] the elder, and [*grantor*] the younger, have, by a writing under their hands and seals, also bearing even date with these presents, authorized the said [*attorney*], and [*other attorney*], attornies of his Majesty's said Court of Common Pleas at Westminster, jointly and severally, or any other attorney of that Court, by confession or otherwise, to suffer judgment to be entered* up against them in the said Court of

Recital of warrant of attorney from grantors for entering up judgment in the Court of Common Pleas at Westminster, on the bond for securing the second annuity.

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act 31 Geo. III. c. 32, providing another declaration and oath for Roman Catholics, do not either of them extend to the Colonies, yet persons who would not subscribe the declaration against popery, have been refused permission to practise the law there. *Sed vide*, as to Catholicism, Butl. n. Co. Lit. 391, a. IV. 5 (*ultimo*).

Colonial barristers rarely practise in England afterwards.

Of all the barristers who have practised in the colonies and afterwards returned to England, few have attempted to practise in the Courts here. For most of the questions that arise in the colonies are founded in litigation, and not in intricacy; and, as the gentlemen of the bar in general go there at an early period in life, before they have attained any considerable share of knowledge, and as order and decorum are not properly attended to in the courts there, it is not in their power to gain much beneficial experience, or to add to their stock of legal learning. Many of the judges in the colonies not having enjoyed the benefits of a liberal education, and not having been regularly bred to the profession of the law, the advocates are generally their superiors in literary acquirements; and he who has the greatest fluency may sometimes be considered as the ablest lawyer. In England, Scotland, and Ireland, the pleader has, in respect to the persons addressed, the simplest and the easiest task of all orators; the judges to whom he addresses his oration, being commonly men of the same rank, of similar education, and not differing greatly in respect of studies or attainments.†

† Campbell's Philosophy of Rhetorick, Book I. Ch. X. sect. ii. Vol. 1. p. 222, ed. 1816.

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Common Pleas, in an action of debt, upon the said third mentioned bond, at the suit of the said [*second grantee*], his executors or administrators. AND the said [*grantor*], the elder, and [*grantor*] the younger have, by a certain other writing under their hands and seals, also bearing even date with these presents, authorized the said [*attorney*] and [*other attorney*], attornies of the said Court of Common Pleas in the said Island of Antigua, jointly and severally, or any other attorney of the said Court of Common Pleas, by confession or otherwise, to suffer judgment to be entered up against them in the said Court of Common Pleas, in another action of debt upon the said bond, at the suit of the said [*second grantee*], his executors or administrators, for the sum of [*double the consideration money for second annuity*] pounds, and costs of suit. AND judgments are to be forthwith entered up against the said [*grantor*] the elder, and [*grantor*] the younger, under the authority of the said several warrants of attorney. AND upon the treaty for the sale and purchase of the said several annuities, or yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, it was agreed, that the same annuities or yearly sums should be further secured by the several provisions hereinafter contained: and that the said annuity or yearly sum of [*first annuity*] pounds, or the said annuity or yearly sum of [*second annuity*] pounds, and each or either of them, might be re-purchased upon the terms expressed in the agreement hereinafter inserted in that behalf: And that the said [*grantor*] the elder, and [*grantor*] the younger, should enter into the covenants hereinafter contained on their respective parts. AND it was also agreed that the costs and charges of preparing and perfecting the several securities for payment of the said annuities or yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, and the memorials thereof, should be borne and paid by the said [*grantor*] the elder, and [*grantor*] the younger, or by one of them. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement with the said [*first grantee*]; and in consideration of the sum of [*consideration money for first annuity*] pounds,

Recital of warrant of attorney for entering up judgment in the Common Pleas of the Island of Antigua, for securing the second annuity.

Judgments to be forthwith entered.

Recital of agreement that both annuities should be further secured as after-mentioned; and might be re-purchased.

And that grantors shall pay the costs.

First Testatum.

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*in notes of the Governor and Company of the Bank of England, payable to bearer on demand, by the said [*first grantee*] well and truly paid, to the said [*grantor*] the elder, and [*grantor*] the younger, immediately before the execution of these presents; the receipt whereof the said [*grantor*] the elder, and [*grantor*] the younger, do, and each of them doth hereby acknowledge; and thereof, and therefrom, and of and from every part thereof, do, and each of them doth by these presents acquit, release, and for ever discharge the said [*first grantee*], his heirs, executors, administrators, and assigns, and every one of them; *The* said [*grantor*] the elder, and [*grantor*] the younger, *have*, and each of them *hath*, given, granted, and confirmed, *And* by these presents *do*, and each of them *Doth* give, grant, and confirm unto the said [*first grantee*], his executors, administrators, and assigns, ONE annuity, or clear yearly sum of [*first annuity*] pounds, of lawful money of Great Britain; to be charged, and chargeable upon, and issuing, payable, had, received, and taken from and out of, ALL THAT plantation and estate, called ——— with the messuages, buildings, lands, tenements, cattle, stock, implements, utensils, and other things, upon, or belonging to the same, or any part thereof; and certain premises called ——, with the appurtenances, situated in the parish of ——, in the division of ——, in the Island of Antigua. *And also* upon, from and out of all messuages, tenements, edifices, erections, buildings, houses, and store-houses, sugar-houses, boiling-houses, curing-houses, still-houses, stills, and kilns, erected, built, standing or being, or to be erected, built, standing, or being in, or upon, the said plantation, land, ground, hereditaments and premises, every, or any part thereof, with their and every of their rights, members, privileges, and appurtenances: *And also* upon, from, and out of all negroes and slaves, men, women, and children, and the increase and progeny of the same negroes, and slaves (*l*): *And also* all horses, cows, oxen and sheep, and other cattle whatsoever, coppers, stews, ladles, skimmers, potting-basons, sugar-pots, stills, still-heads, worms, worm-tubs, coolers, cisterns, plantation

Grant by both grantors, of

first annuity,

charged on

plantation &c. in Antigua.

Upon all messuages, &c.

all negroes, &c.

all horses, &c.

(*l*) *Vide post*, p. 246.

tools, and all other implements, goods, and chattels whatsoever, to the said plantation, hereditaments, and premises, every or any of them, or any part thereof belonging, or in any wise appertaining, or with them, or any of them used, occupied, possessed, or enjoyed; *And also* upon, from, and out of, *All other* the plantation, and land, and hereditaments, of which the said [*grantor*] the elder, is seised for his life as aforesaid, under or by virtue of the said recited will, with remainder after the death of the said [*grantor*] the elder, to the said [*grantor*] the younger, for his life: *And also* upon, from, and out of the reversion and reversions, remainder and remainders, yearly and other rents, profits, duties, suits, and services of the said plantation and hereditaments, hereby charged, or made chargeable, with the payment of the said annuity or yearly sum of [*first annuity*] pounds, and every part and parcel of the same, with their, and every of their appurtenances. To HAVE, hold, receive, perceive, take, and enjoy the same annuity or yearly sum of [*first annuity*] pounds, and every part thereof, unto the said [*first grantee*], his executors, administrators, and assigns, henceforth for and during the (*m*) terms of the natural lives of the said [*grantor*] the elder, and [*grantor*] the younger, and the life of the longer liver of them. The said annuity or yearly sum of [*first annuity*] pounds to be payable and paid unto the said [*first grantee*], his executors, administrators, or assigns, at or in the common dining hall of the Inner Temple, London, upon the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, for and during the (*n*) natural lives of the said [*grantor*] the

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All other hereditaments devised by will,

and upon the reversion, &c.

Habendum, first annuity, for grantors' lives, and the life of the survivor;

payable quarterly;

(*m*) If for years determinable on death, say,

FOR YEARS DETERMINABLE ON DEATH.

"term of ninety-nine years, if the said [*grantor*] the elder, and [*grantor*] the younger, or either of them, should so long live. The said annuity," &c. *ut supra*, p. 191.

(*n*) If for years determinable on death, say,

FOR YEARS DETERMINABLE ON DEATH.

"term of ninety-nine years, if the said [*grantor*] the elder, and [*grantor*] the younger, or either of them, should so long live, between the hours," &c. *ut supra*.

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elder, and [*grantor*] the younger,* and the life of the survivor of them, between the hours of two and four in the afternoon of the same days respectively; without any deduction, defalcation, or abatement whatsoever out of the same or any part thereof, for or in respect of any charges, taxes, assessments, or other matter, cause, or thing whatsoever, charged, taxed, assessed, or imposed, or at any time, and from time to time hereafter, to be charged, taxed, assessed, or imposed upon the said plantation and hereditaments hereby charged therewith, or any part of the same, or upon the said [*first grantee*], his executors, administrators, or assigns, for or in respect of the same plantation and hereditaments, or any part thereof, or for or in respect of the said annuity or yearly sum of [*first annuity*], pounds, by authority of parliament, or of the interior legislature of the said Island of Antigua, or otherwise howsoever: The first payment of the said annuity, or yearly sum of [*first annuity*] pounds, to become due, and be made, on the —— day of ——, now next ensuing, provided the said [*grantor*] the elder, and [*grantor*] the younger, or either of them, should be then living: And in case the survivor of them, the said [*grantor*] the elder, and [*grantor*] the younger, should die between, or in the interval of any two of the said quarterly days of payment, and either before or after the said [*first*] day of [*payment*], now next, then such part of the said annuity or yearly sum of [*first annuity*] pounds, as shall be in proportion to the time or number of days, which (inclusive of the day of the decease of the survivor of them the said [*grantor*] the elder, and [*grantor*] the younger) shall elapse prior to his decease, and after the day of payment next and immediately preceding that event, or as the case shall require, next after the day of the date of these presents; to be paid to the said [*first grantee*], his executors, administrators, or assigns, immediately after the decease of such survivor, and demand made thereof. AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the said agreement with the said [*second grantee*], and in consideration of the sum of [*consideration money for second annuity*] pounds, in notes of the Governor and

clear of all deductions;

with proportional part to survivor's death.

Second Testatum.

Company of the Bank of England, payable to bearer on demand, by the said [*second grantee*] well and truly paid *to the said [*grantor*] the elder, and [*grantor*] the younger, immediately before the execution of these presents; the receipt whereof the said [*grantor*] the elder, and [*grantor*] the younger, do, and each of them doth, hereby acknowledge; and thereof, and therefrom, and from every part thereof, do, and each of them doth, by these presents acquit, release, and for ever discharge the said [*second grantee*], his heirs, executors, administrators, and assigns, and every of them; *The* said [*grantor*] the elder, and [*grantor*] the younger, *Have*, and each of them *Hath*, given, granted, and confirmed, *And* by these presents *do*, and each of them *doth*, give, grant, and confirm, unto the said [*second grantee*], his executors, administrators, and assigns, *One* annuity, or clear yearly sum of [*second annuity*] pounds, of lawful money of Great Britain; to be charged, and chargeable upon, and issuing, payable, had, received, and taken from and out of, ALL THAT and THOSE the said plantation, hereditaments and premises hereinbefore charged, or made chargeable with the payment of the said annuity, or yearly sum of [*first annuity*] pounds, hereby granted, or intended so to be, and every part and parcel of the same, with their, and every of their rights, members, and appurtenances: *And also* upon, from, and out of the reversion and reversions, remainder and remainders, yearly and other rents, profits, duties, suits, and services of the said plantation and hereditaments hereby charged, or made chargeable with the payment of the said annuity, or yearly sum of [*first annuity*] pounds, as aforesaid, and every part and parcel of the same, with their and every of their appurtenances. TO HAVE, hold, receive, perceive, take, and enjoy the said annuity or yearly sum of [*second annuity*] pounds, and every part thereof, unto the said [*second grantee*], his executors, administrators, and assigns, henceforth for and during the term of (*l*) the natural life of the said [*grantor*]

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Grant by both grantors of

second annuity,

charged on same plantation, &c.

and upon the reversion, &c.

Habendum, second annuity for younger grantor's life,

(*l*) If for years determinable on death, say,

"ninety-nine years, if the said [*grantor*] the younger should so long live. The said annuity," &c. *ut supra*.

FOR YEARS DETERMINABLE ON DEATH.

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the younger. The said annuity, or yearly sum of [*second annuity*] pounds, to be payable, and paid, unto the said *[*second grantee*], his executors, administrators, or assigns, at or in the common dining hall of the Inner Temple, London, upon the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, for and during the (*p*) natural life of the said [*grantor*] the younger, between the hours of two and four of the afternoon of the same days respectively; without any deduction, defalcation, or abatement whatsoever out of the same, or any part thereof, for or in respect of any charges, taxes, assessments, or other matter, cause, or thing whatsoever, charged, taxed, assessed, or imposed, or at any time, and from time to time hereafter, to be charged, taxed, assessed, or imposed upon the said plantation and hereditaments hereby charged therewith, or any part of the same, or upon the said [*second grantee*], his executors, administrators, or assigns, for or in respect of the said plantation and hereditaments, or any part thereof, or for or in respect of the said annuity, or yearly sum of [*second annuity*] pounds, by authority of parliament, or otherwise howsoever. The first payment of the said annuity or yearly sum of [*second annuity*] pounds, to become due and be made on the —— day of ——, now next ensuing, provided the said [*grantor*] the younger should be then living: And in case the said [*grantor*] the younger should die between or in the interval of any two of the said quarterly days of payment, and either before or after the said [*first*] day of [*payment*], then such part of the said annuity, or yearly sum of [*second annuity*] pounds, as shall be in proportion to the time or number of days, which, inclusive of the day of the decease of the said [*grantor*] the younger, shall elapse prior to his decease, and after the day of payment next and immediately preceding that event, or as the case shall require, next after the day of the date of these

payable quarterly;

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without any deduction.

With proportional part to younger grantor's death.

(*p*) If for years determinable on death, say,

FOR YEARS DETERMINABLE ON DEATH.

"term of ninety-nine years, if the said [*grantor*] the younger should so long live, between the hours," &c. *ut supra.*

GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

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Power of distress by two grantors, on a plantation and lands in Antigua, for recovering two distinct annuities, granted to two different persons.

presents; to be paid to the said [*second grantee*] his executors, administrators, or *assigns, immediately after the decease of the said [*grantor*] the younger, and demand made thereof. And the said [*grantor*] the elder, and [*grantor*] the younger, do, and each of them doth, hereby also grant unto the said [*first grantee*], his executors, administrators, and assigns, as to the said annuity, or yearly sum of [*first annuity*] pounds, and to the said [*second grantee*], his executors, administrators, and assigns, as to the said annuity, or yearly sum of [*second annuity*] pounds, that from time to time, when and as often as it shall happen that the said annuities, or yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, hereby granted, or intended so to be, or either of them, or any part of them, or either of them, shall be in arrear or unpaid in the whole or in part by the space of fourteen days next over or after any one of the days or times whereon the same respectively are hereinbefore appointed to be paid, as aforesaid, then, and so often, and from time to time, it shall and may be lawful to and for the said [*first grantee*], his executors, administrators, and assigns, as to and in respect of the said annuity, or yearly sum of [*first annuity*] pounds, and to and for the said [*second grantee*], his executors, administrators, and assigns, as to and in respect of the said annuity, or yearly sum of [*second annuity*] pounds, into and upon the said plantation and hereditaments hereby charged and made chargeable with the said annuities, or yearly sums of [*first annuity*] and [*second annuity*] pounds, or into and upon any part thereof, to enter and distrain for the same annuities, or yearly sums, or such of them as shall be in arrear, and all the arrears thereof: and the distress and distresses then and there found to detain, manage, sell, and dispose of, in the same manner in all respects as distresses for rents, reserved upon leases for years, may or ought to be detained, managed, sold, and disposed of; and as if the said annuities, or yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, hereby granted, were respectively rents reserved upon a lease for years. *To the intent*, that as to the said annuity, or yearly sum of [*first*

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annuity] pounds, the said [*first grantee*], his executors, administrators, or assigns; and as to the annuity, or *yearly sum of [*second annuity*] pounds, the said [*second grantee*], his executors, administrators, or assigns, shall or may thereby, therewith, or otherwise, be fully satisfied and paid the said annuities, or yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, hereby granted, or intended so to be, or such of them as shall be in arrear; and all the arrears thereof; and all costs, charges, and expenses to be occasioned by non-payments thereof, at the days or times hereinbefore appointed for payment of the same respectively. AND the said [*grantor*] the elder, and [*grantee*] the younger, do, and each of them doth, hereby also grant unto the [*first grantee*], his executors, administrators, and assigns, as far as relates to the said annuity, or yearly sum of [*first annuity*] pounds, and to the said [*second grantee*], his executors, administrators and assigns, as far as relates to the said annuity, or yearly sum of [*second annuity*] pounds, that from time to time, when, and as often as it shall happen, that the said annuites, or yearly sums of [*first annuity*] and [*second annuity*] pounds, hereby granted, or intended so to be, or either of them, or any part of them, or either of them, shall be in arrear and unpaid by the space of twenty-one days next over or after any one of the days whereon the same respectively is or are hereinbefore appointed to be paid as aforesaid, then, and from time to time, as often as it shall so happen, and either upon or at any time after the expiration of the said twenty-one days, it shall and may be lawful to and for the said [*first grantee*], his executors, administrators, and assigns, for or in respect of the said annuity, or yearly sum of [*first annuity*] pounds, and to and for the said [*second grantee*], his executors, administrators, and assigns, for or in respect of the said annuity, or yearly sum of [*second annuity*] pounds, although no legal or formal demand should have been made of the said annuities or yearly sums of [*first annuity*], and [*second annuity*] pounds hereby granted, or intended so to be, or either of them, into and upon the said plantation and hereditaments hereby charged and made chargeable with the said annuities, or

Power of entry by two grantors, on a plantation and lands in Antigua, for securing two distinct annuities, granted to two different persons.

yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, or into and upon any part thereof, *in the name of the whole of the same to enter, and the same plantation and hereditaments to have, hold, and enjoy, and the rents and profits thereof, and of every part thereof, to receive and take, to and for his and their own use and benefit, until he or they respectively shall thereby, or therewith, or otherwise, be fully satisfied and paid the said annuities, or yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds respectively hereby granted, or intended so to be; and all arrears thereof; and also so much of the same annuities, or yearly sums, as from time to time shall accrue or grow due to them respectively, during such time as they respectively shall continue in possession of the premises, after every such entry as aforesaid; and also, all such costs, losses, charges, damages, and expenses, as shall be occasioned by non-payments of the said annuities, or yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, or any part thereof, at the days and times aforesaid: and such possession, when taken, to be without impeachment of waste. AND THIS INDENTURE ALSO WITNESSETH, that for further, better, and more effectually securing the payment of the said annuities, or clear yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds respectively hereby granted to the said [*first grantee*], and [*second grantee*] respectively, and their respective executors, administrators, and assigns: and also in consideration of ten shillings of lawful money of Great Britain, to each of them the said [*grantor*] the elder, and [*grantor*] the younger, well and truly paid by the said [*trustee*], immediately before the execution of these presents; the receipts whereof are hereby acknowledged; *The* said [*grantor*] the elder, and [*grantor*] the younger, on the nomination and by the direction and appointment of the said [*first grantee*], and [*second grantee*], testified by their severally executing these presents, *have,* and each of them *hath,* granted, bargained, sold, leased, and demised, *And* by these presents *do,* and each of them *doth* grant, bargain, sell, lease, and demise, unto the said [*trustee*], his executors, administrators, and assigns, ALL

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Third Testatum.

Demise by tenant for life, and for life in remainder, of

plantation, &c.

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and the reversion, &c.

THAT and THOSE the said plantation, hereditaments, and premises, hereinbefore charged and made chargeable with *the payment of the said annuities, or annual sums hereby granted, or intended so to be; and every part and parcel of the same, with their rights, members and appurtenances. AND the reversion and reversions, remainder and remainders, yearly and other rents, suits, and services of the same plantation and hereditaments, with their, and every of their rights, members, and appurtenances.

Habendum for 99 years, if either of grantors should so long live.

TO HAVE AND TO HOLD the said plantation and hereditaments, and all and singular other the premises hereby granted or demised, or otherwise assured, or intended so to be, and every part and parcel of the same, with the appurtenances, unto the said [*trustee*], his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during, and unto the end of the full term or time of ninety-nine years, thence next ensuing, and fully to be complete and ended, if the said [*grantor*] the elder, and [*grantor*] the younger, or either of them, should so long live; and without impeachment of or for any manner of waste. YIELDING AND PAYING therefore, yearly, and every year, during the said term hereby granted, the rent of one pepper corn, if the same should be lawfully demanded. AND *it is hereby declared and agreed*, by and between the said [*grantor*] the elder, and [*grantor*] the younger, [*first grantee*], [*second grantee*], and [*trustee*], and it is the true intent and meaning of them, and these presents, that the said term of ninety-nine years, hereby granted or demised to the said [*trustee*], his executors, administrators, and assigns, determinable as aforesaid, is granted or demised to him and them, UPON TRUST for better securing to the said [*first grantee*], his executors, administrators, and assigns the due and regular payment of the said annuity, or clear yearly sum of [*first annuity*] pounds, hereinbefore granted to him and them as aforesaid: *And* for better securing to the said [*second grantee*], his executors, administrators, and assigns, the due and regular payment of the said annuity, or clear yearly sum of [*second annuity*] pounds, hereinbefore granted to him and them as aforesaid. AND for that purpose, in case, and when, and

Reddendum, a pepper corn.

Declaration that term is demised to trustee,

Upon trust for better securing both annuities;

and for that purpose when

GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

as often as the said annuities, or clear yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, or *either of them, or any quarterly payment of the same, or either of them, shall be in arrear and unpaid in the whole, or in any part, by the space of twenty-eight days next after any one of the days or times hereinbefore appointed for payment thereof, then, and in that case, and from time to time, as often as it shall so happen, it shall and may be lawful to and for the said [*trustee*], his executors, administrators, or assigns, by and out of the rents and profits of the said plantation and hereditaments, so granted or demised to him or them, as aforesaid, for the said term of ninety-nine years, determinable as aforesaid: or by mortgage or sale of the said plantation and hereditaments, or of a competent part thereof, for all, or any part of the said term of ninety-nine years, determinable as aforesaid; or by bringing actions against, or making distresses upon all and every or any of the present or future tenants of the said plantation and hereditaments, for recovery of the rents then in arrear; or by making entries upon the same plantation, hereditaments, and premises, or by all and every, or any one or more of the said ways and means; or by any other lawful and reasonable ways and means whatsoever, to levy and raise such arrears of the said annuities, or clear yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, as from time to time shall become due and remain unpaid; together with all such damages, costs, charges, and expenses, as the said [*first grantee*], and [*second grantee*] respectively or their respective executors, administrators, or assigns, shall incur, expend, sustain, or be put unto, by reason of the non-payment of the said annuities, or clear yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, or any part thereof: together with the costs, charges, and expenses attending the execution of the trusts of the said term of ninety-nine years, determinable as aforesaid. AND UPON THIS FURTHER TRUST, that the said [*trustee*], his executors, administrators, or assigns, do and shall in the first place, retain and reimburse to and for himself and themselves, the costs, charges, and expenses of, and attending the execution of the trusts

either annuity is in arrear 28 days, trustee out of the rents and profits, or by mortgage or sale, or by bringing actions, or making distresses upon the tenants of plantation, &c. to levy arrears, with all costs, &c.

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Trustee in the first place to retain expenses of executing trusts;

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hereby reposed in him or them; and in the next place, pay, and satisfy to the said [*first grantee*], and [*second grantee*] respectively, or their *respective executors, administrators, or assigns, all arrears, of the said annuities, or clear yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, which shall be then due or owing to them respectively, rateably, without any priority or preference whatsoever; and all costs, charges, damages, and expenses, which they respectively shall have incurred, suffered, borne, sustained, and laid out, by reason, or on account of the non-payment of the said annuities, or clear yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, respectively; or in or about recovering and enforcing the payment of the same respectively. AND UPON THIS FURTHER TRUST, that in the mean time, and until the said annuities, or clear yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, or some quarterly payment thereof, shall be in arrear or unpaid, in the whole, or in part, by the space of twenty-eight days next after some or one of the days hereby appointed for payment of the same respectively; and also from time to time, when and as often as all arrears of the said annuities or clear yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, and the said costs, charges, damages, and expenses, shall be raised, or fully satisfied and paid, the said [*trustees*], his executors, administrators, and assigns, do and shall permit and suffer the rents and profits of the said plantation and hereditaments to be received by such person or persons, as would have been entitled to the same in case these presents had not been made and executed, and to and for his and their own use and benefit. AND UPON THIS FURTHER TRUST, that the said [*trustee*], his executors, administrators, and assigns, do and shall from time to time, after paying the said annuities, or clear yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, when and as the same respectively shall become due and payable; and also after paying, deducting, and retaining such costs, charges, damages, and expenses as aforesaid, pay to the person or persons, who would have been entitled to the same in case these presents had not been made or executed, the

and in the next place to pay arrears of both annuities, without any priority;

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and all grantees' costs, &c.

until annuities be in arrear, and when arrears, &c. paid, trustee to permit rents to be received by persons entitled thereto.

Trustee to pay surplus monies in his hands to the persons entitled thereto.

money (if any) which from time to time shall remain in the hands of the said [*trustee*], his executors, administrators, or assigns, *unapplied to any of the purposes hereinbefore mentioned. And *it is hereby declared and agreed*, by and between the said [*grantor*] the elder, and [*grantor*] the younger, and also the [*first grantee*], and [*second grantee*], and they do hereby severally direct and appoint, that the person or persons who shall pay to the said [*trustee*], his executors, administrators, or assigns, all or any part of the rents and annual profits of the said plantation and hereditaments hereby granted or demised, or otherwise assured, or intended so to be; or advance any money upon any sale or sales, or the security of any mortgage or mortgages, of the same plantation and hereditaments, or any part thereof, or otherwise, pursuant to the trust hereinbefore contained, shall not be obliged or required to see the application of the said rents, profits, and money respectively, or any of them; or be answerable or accountable for the misapplication or non-application of the same: And that all and every receipts and receipt which shall be given by the said [*trustee*], his executors, administrators, or assigns, for all or any part of the said rents, profits, and money respectively, shall be a good and sufficient acquittance and discharge, or several good and sufficient acquittances and discharges, for the sum and sums of money, which by the said receipt and receipts, and every of them respectively, shall be acknowledged or expressed to be, or to have been received. And *Fourth Testatum.* THIS INDENTURE FURTHER WITNESSETH, that for the purposes and considerations hereinbefore expressed; and in consideration of ten shillings, of like lawful money, to each of them the said [*grantor*] the elder, and [*grantor*] the younger, well and truly paid by the said [*trustee*], immediately before the execution of these presents; the receipts whereof are hereby acknowledged: *The* said [*grantor*] the elder, and [*grantor*] the younger, on the nomination, and at the instance and request, and by the direction and appointment of the said [*first grantee*], and [*second grantee*], testified as aforesaid, *have*, and each of them *hath* granted, bargained, sold, assigned, transferred, and set over, *And* by these presents *do*, and each of them *doth* grant, bar-

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Indemnity to persons paying money to trustee.

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Trustee's receipts to be sufficient discharges.

Assignment by both grantors, to trustee of term, of

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gain, sell, assign, transfer, and set over, unto the said [*trustee*], his executors, administrators, and assigns, ALL *THAT the said recited bond given and entered into by the said [*two mortgagees*], as aforesaid, for payment of the said yearly sum of —— hundred pounds: AND all and every sums and sum of money, which from time to time shall become due or payable under and by virtue of that bond: AND ALSO all the right, title, interest, trust, property, claim, and demand whatsoever, at law and in equity, of them the said [*grantor*] the elder, and [*grantor*] the younger, of, in, to, and out of the same bond, sum, and sums of money. TO HAVE, hold, receive, perceive, take, and enjoy the said bond, sum and sums of money, and all and singular other the premises hereby assigned, or intended so to be, and every part and parcel of the same, unto the said [*trustee*], his executors, administrators, and assigns, henceforth, as his and their own bond, money, and effects. *With* full power and authority to and for the said [*trustee*], his executors, administrators, and assigns, to use the name or names, and also to act as the attorney or attornies, of the said [*grantor*] the elder, and [*grantor*] the younger, and each or either of them, their, each, or either of their executors, administrators, or assigns, in recovering and enforcing the benefit of the said last mentioned bond, and money, or yearly sum thereby secured; and giving acquittances and discharges for the same. AND *it is hereby directed declared and agreed* that the said last mentioned bond, and the money or yearly sum thereby secured, shall be held by the said [*trustee*], his executors, administrators, and assigns, UPON the same or the like trusts, and under and subject to the same or the like provisoes, declarations, and agreements, as are hereinbefore limited, expressed, and declared, of and concerning the said term of ninety-nine years, (determinable as aforesaid,) in the said plantation and other hereditaments hereby demised, or otherwise assured, or intended so to be, and the rents and profits thereof. AND THE SAID [*grantor*] the elder, and [*grantor*] the younger, do hereby jointly for themselves, their heirs, executors, and administrators: and each of them severally doth hereby for himself, his heirs, executors, and administrators, covenant, declare,

bond given by mortgagees and consignees for paying a yearly sum to grantors:

all sums, &c.

And all the right, &c.

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Habendum:

with power as their attorney, to enforce and receive same.

Declaration that bond and yearly sum thereby secured, shall be held by trustee, upon the same trusts as are hereinbefore declared of term of 99 years.

Covenant by both grantors jointly and severally with trustee, in trust for grantees, to employ mortgagees as con-

and agree, to and with the said [*trustee*], his executors, administrators, and assigns, *In trust* as aforesaid, that *they the said [*grantor*] the elder, and [*grantor*] the younger, and the survivor of them, shall or will from time to time, during the continuance of both or either of the annuities hereby granted, employ the said [*two mortgagees*], or the survivor of them, or in case of their several deaths, or any other cause which shall render it necessary that the consignments of the produce of the said plantation and hereditaments shall be made to some other person or persons, then and in that case, and from time to time, as often as any change shall be made in the consignee or consignees, shall or will employ some person or persons, to be from time to time appointed or approved of by the said [*first grantee*] and [*second grantee*], their executors, administrators, or assigns, to receive the consignments of the produce of the said plantation and hereditaments: *And* that the person or persons, who from time to time shall be appointed a consignee or consignees, shall, at or before his or their appointment, enter into a bond to the same or the like effect, as the said hereinbefore recited bond of the said [*two mortgagees*]: *And* that the same bond shall be assigned to the said [*trustees*], his executors, administrators, or assigns, *In trust* as aforesaid. AND THE SAID [*grantor*] the elder, and [*grantor*] the younger, do hereby jointly for themselves, their heirs, executors, and administrators; and each of them doth hereby severally, for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustee*], his executors, administrators, and assigns, *In trust* as aforesaid, that they the said [*grantor*] the elder, and [*grantor*] the younger, or one of them, their or one of their heirs, executors, or administrators, shall or will, from time to time, well and truly pay or cause to be paid unto the said [*first grantee*], and [*second grantee*] respectively, or their respective executors, administrators, or assigns, the said several annuities, or clearly yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, hereby granted or secured to them as aforesaid; and also such proportional part thereof as aforesaid, free and clear of and from all taxes, charges,

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rates, and all other deductions whatsoever, parliamentary or otherwise, at the days and times, and in manner and *form hereinbefore expressed, limited, and appointed for payment thereof respectively, and according to the true intent and meaning of these presents. And also that they the said [*grantor*] the elder, and [*grantor*] the younger, or one of them, now, at the time of the sealing and delivery of these presents, have, or hath, in themselves, or himself, good right or full power, and lawful and absolute authority, to subject and charge all the said plantation and hereditaments, with the appurtenances, to and with the payment of the said annuities, or clear yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, and the powers and remedies hereby given for compelling and enforcing the payment thereof: *And also* to demise the said plantation and hereditaments unto the said [*trustee*], his executors, administrators, and assigns, for the said term of ninety-nine years, determinable as aforesaid: *And also* to assign the said recited bond of the said [*two mortgagees*], and the money or yearly sum thereby secured unto the said [*trustee*], his executors, administrators, and assigns, upon the trusts and for the ends, intents, and purposes hereinbefore expressed and declared concerning the said term and bond, money, or yearly sum respectively, according to the true intent and meaning of these presents. And also, that the said plantation and hereditaments hereby charged or made chargeable with the said annuities, or clear yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, shall from time to time, during the continuance of the said annuities, or clear yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, and each or either of them, continue and be subject to the payment of the said annuities, or clear yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, and the said powers and remedies by distress and entry; and be of sufficient value for payment of the said annuities, or clear yearly sums of [*first annuity*] pounds, and [*second annuity*] pounds, and all the arrears thereof. And moreover, that they the said [*grantor*] the elder, and [*grantor*] the younger, and each of them, their and each of their heirs, executors, and administrators, and all and every other person or

that grantors have good right to charge the plantation with both annuities:

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to demise plantation,

and to assign bond to trustee,

upon the trusts hereinbefore declared:

that plantation shall remain subject to the payment of the annuities, and be of sufficient value:

and for further assurance.

persons whosoever, lawfully claiming or to claim, by, *from, under, or in trust for them, or either of them, shall and will, at any time or times, and at all times hereafter, upon every reasonable request of the said [*first grantee*], and [*second grantee*], or either of them, their, or either of their executors, administrators, or assigns, but at the costs and charges of the said [*grantor*] the elder, and [*grantor*] the younger, or one of them, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable act and acts, deed and deeds, assurance and assurances in the law whatsoever, for further, better, more perfectly, lawfully, and absolutely, or satisfactorily granting or assuring the said annuity, or clear yearly sum of [*first annuity*] pounds, hereby granted, or intended so to be, with such powers and remedies as aforesaid, unto the said [*first grantee*], his executors, administrators, and assigns, for the (*q*) lives of the said [*grantor*] the elder, and [*grantor*] the younger, and the life of the longer liver of them, in manner aforesaid: *And also* for further, better, more perfectly, lawfully, and absolutely or satisfactorily granting or assuring the said annuity, or clear yearly sum of [*second annuity*] pounds, hereby granted, or intended so to be, with such powers and remedies as aforesaid, unto the said [*second grantee*], his executors, administrators, and assigns, for the (*r*) life of the said [*grantor*] the younger in manner aforesaid: *And also* for demising, confirming, or assuring the said plantation and hereditaments unto the said [*trustee*], his executors, administrators, or assigns, for all the then residue and remainder of the said term of ninety-nine years (determinable as aforesaid): *And also* for assigning the said

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(*q*) If for years determinable on death, say,

FOR YEARS DETERMINABLE ON DEATH.

"term of ninety-nine years, if the said [*grantor*] the elder, and [*grantor*] the younger, or either of them, should so long live, in manner aforesaid."

(*r*) If for years determinable on death, say,

FOR YEARS DETERMINABLE ON DEATH.

"term of ninety-nine years, if the said [*grantor*] the younger should so long live, in manner aforesaid."

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*recited bond of the said [*two mortgagees*], and the money or yearly sum thereby secured, unto the said [*trustees*], his executors, administrators, or assigns, upon the trusts, and for the ends, intents, and purposes, hereinbefore expressed and declared of and concerning the same term, and bond, money, or yearly sum respectively, according to the true intents and meaning of these presents; *As* by the said [*first grantee*], his executors, administrators, or assigns, or the said [*second grantee*], his executors, administrators, or assigns, or any or either of them, or their, any, or either of their counsel in the law, shall be reasonably devised or advised and required, and be tendered to be made, done, and executed. AND FURTHER, that they the said [*grantor*] the elder, and [*grantor*] the younger, and each of them, shall and will at any time hereafter, when thereunto requested by the said [*first grantee*], his executors, administrators, or assigns; and that he the said [*grantor*] the younger, shall and will at any time hereafter, when thereunto requested by the said [*second grantee*], his executors, administrators, or assigns, attend at the Pelican Life Insurance Office, or any other office of insurance in London or Westminster, for the purpose and to the end that a policy of insurance may be obtained by and at the expense of the said [*first grantee*], his executors, administrators, or assigns, on the lives of the said [*grantor*] the elder, and [*grantor*] the younger, or the life of either of them; or by and at the expense of the said [*second grantee*], his executors, administrators, or assigns, on the life of the said [*grantor*] the younger: *And also* that the said [*grantor*] the elder, and [*grantor*] the younger, or either of them, shall not nor will at any time during the continuance of the said annuity, or clear yearly sum of [*first annuity*] pounds, go on the seas, or in parts beyond the seas, without giving to the said [*first grantee*], his executors, administrators, or assigns, as early notice thereof as may be; and, if circumstances will admit, at least one calendar month's notice: *And* that the said [*grantor*] the younger shall not nor will at any time during the continuance of the said annuity, or clear yearly sum of [*second annuity*] pounds, go on the seas, or in parts beyond the seas, without giving to the *said [*second grantee*], his executors, administrators, or as-

Covenant to appear at insurance office:

not to go beyond the seas during the continuance of the annuities, without giving notice to the respective annuitants:

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signs, as early notice thereof as may be, and if circumstances will admit, at least one calendar month's notice: *And* that in case the said [*first grantee*], his executors, administrators, or assigns, should have previously insured, or should insure, any sum or sums of money, not exceeding [*consideration money for first annuity*] pounds, on the lives of the said [*grantor*] the elder, and [*grantor*] the younger, or the life of either of them; or the said [*second grantee*], his executors, administrators, or assigns, should have previously insured, or should insure any sum or sums of money, not exceeding [*consideration money for second annuity*] pounds, on the life of the said [*grantor*] the younger; and the said [*first grantee*], his executors, administrators, or assigns, or the said [*second grantee*], his executors, administrators, or assigns, should pay any additional rate of insurance, by reason of the said [*grantor*] the elder, and [*grantor*] the younger, or either of them, going on the seas, or beyond the seas, as aforesaid, then, for or in respect of so much time as the said [*grantor*] the elder, and [*grantor*] the younger, or either of them, shall go on the seas, or be in parts beyond the seas, and the said [*first grantee*], his executors, administrators, or assigns, or the said [*second grantee*], his executors, administrators, or assigns, shall pay any such additional premium or premiums of insurance, they the said [*grantor*] the elder, and [*grantor*] the younger, their heirs, executors, or administrators, shall or will well and truly reimburse, satisfy, and pay to the said [*first grantee*], and [*second grantee*] respectively, their respective executors, administrators, or assigns, all such sum and sums of money, as the said [*first grantee*], and [*second grantee*] respectively, and their respective executors, administrators, or assigns, shall pay, as and for an additional premium or premiums, in respect of the said [*grantor*] the elder, and [*grantor*] the younger, or either of them, going upon or being beyond the seas (*s*): *And* that all and every such sum and sums of money shall be charged, and chargeable, upon the said term of ninety-nine years, hereby granted, determinable as aforesaid; and be raisable under and by virtue of the trusts of that term, and the said bond of

to pay additional premiums to grantees;

additional premiums to be raisable under trusts of term and bond, warrants of attorney, and judgments.

[(*s*) "With interest thereon at the rate of 5 pounds per cent. per annum."]

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*the said [*two mortgagees*], and the money or yearly sum thereby secured; and also under and by virtue of the said several warrants of attorney, bearing even date with these presents, and the judgments (if any) to be entered up thereupon: and shall be payable to the said [*first grantee*] and [*second grantee*] respectively, and their respective executors, administrators, or assigns, when and as soon as the same shall have been paid by them respectively. [*Add indemnity clause to trustee*, ut ante, p. 178.)

Declaration that securities are given for one and the same sum respectively:

AND *it is hereby declared and agreed* by and between the said parties to these presents, that the said bonds of the said [*grantor*] the elder, and [*grantor*] the younger, and warrants of attorney, and judgments (if any) to be entered up under and by virtue of the said warrants of attorney, and also these presents, are respectively given, and to be entered up, for the considerations only which are expressed in these presents; and for securing one and the same annuity, or clear yearly sum of [*first annuity*] pounds, and not for securing several annuities, or yearly sums of [*first annuity*] pounds; and for securing one and the same annuity, or yearly sum of [*second annuity*] pounds, and not for securing several annuities, or yearly sums of [*second annuity*] pounds:

that no execution shall be issued on judgments respectively, until annuity thereby secured shall be in arrear 21 days:

AND that no execution or executions shall be issued or taken out upon the judgments to be entered up as aforesaid, or either of them, unless or until the whole or a part of some quarterly payment of the annuity, or clear yearly sum of [*first annuity*) pounds, or of the annuity, or clear yearly sum of [*second annuity*] pounds thereby, or intended to be thereby secured, shall be in arrear by the space of twenty-one days:

that it shall not be necessary to revive judgments:

AND that from time to time, and at all times hereafter, it shall and may be lawful to and for the said [*first grantee*] and [*second grantee*] respectively, and their respective executors, administrators, or assigns, to sue out and prosecute one or more writ or writs of execution upon the said judgments, or either of them, without reviving the same, although and notwithstanding there should have been no former proceedings upon the said judgments, or either of them, or no proceedings within one year (*t*) next and

(*t*) *Vide* Act of Assembly of Antigua, 31 Geo. III. No. 475, s. 84, *post*, p. 239.

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*immediately preceding the teste or issuing of such writ or writs: And that the said [*grantor*], the elder, and [*grantor*] the younger, or either of them, their or either of their heirs, executors, administrators, or assigns, shall not nor will have, receive, or take any plea, exceptions, proceedings, or other benefit from the omission of the said [*first grantee*], his executors, administrators, or assigns, or the said [*second grantee*], his executors, administrators or assigns, to revive the said judgments, or either of them, or proceed under the same from year to year, and within the space of every year: And that if they or either of them should attempt so to do, by motion or other proceeding, this present agreement shall or may be pleaded or given in evidence as a bar thereto. And *it is hereby declared and agreed*, by and between the said [*first grantee*], and [*grantor*] the elder, and [*grantor*] the younger, that after the decease of the survivor of them the said [*grantor*] the elder, and [*grantor*] the younger, and full payment to the said [*first grantee*], his executors, administrators, or assigns of the said annuity, or clear yearly sum of [*first annuity*] pounds, and all arrears thereof up to the day of the decease of such survivor, and all such costs, charges, and expenses as aforesaid, the said [*first grantee*], his executors, administrators, or assigns, shall or will, at the request, costs, and charges of the heirs, executors, administrators, or assigns, or either of them the said [*grantor*] the elder, and [*grantor*] the younger, acknowledge satisfaction upon the record or records of the said several judgments, for [*double the consideration money for the first annuity*] pounds, and costs of suit, in due form of law; or do any further or other act, matter or thing, which may be reasonably required for releasing and extinguishing all right and remedy under his or their said judgments, and all executions thereupon respectively; *So* as for doing thereof, the said [*first grantee*], his executors, administrators, or assigns shall not be compelled or compellable to go or travel from the place or places of his or their then residence or abode. And *it is hereby further declared and agreed* by and between the said [*second grantee*], and [*grantor*] the elder, and [*grantor*] *the younger, that after the decease of the said [*grantor*]

that grantors will not take advantage of omission to revive judgment.

Declaration that after decease of survivor of grantors, and full payment of first annuity, and all costs, first grantee will acknowledge satisfaction on his judgments, or do any further act for releasing them.

Declaration that after younger grantor's decease, and full

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the younger, and full payment to the said [*second grantee*], his executors, administrators, or assigns of the said annuity, or clear yearly sum of [*second annuity*] pounds, and all arrears thereof, up to the day of the decease of the said [*grantor*] the younger, and all such costs, charges and expenses as aforesaid, the said [*second grantee*], his executors, administrators, or assigns, shall or will, at the request, costs, and charges of the said [*grantor*] the elder, his heirs, executors, administrators, or assigns, or of the heirs, executors, administrators, or assigns of the said [*grantor*] the younger, any or either of them, acknowledge satisfaction, upon the record or records of the said several judgments, for [*double the consideration money for the second annuity*] pounds, and costs of suit, in due form of law; or do any further or other act, matter, or thing, which may be reasonably required for releasing and extinguishing all right and remedy under his or their said judgments, and all executions thereupon respectively; *So* as for doing thereof the said [*second grantee*], his executors, administrators, or assigns, shall not be compelled or compellable to go or travel from the place or places of his or their then residence or abode. PROVIDED ALWAYS, *and it is hereby expressly declared and agreed* by and between the said [*grantor*] the elder, and [*grantor*] the younger, and [*first grantee*], and it is the true intent and meaning of them and of these presents, that in case the said [*grantor*] the elder, and [*grantor*] the younger, or either of them, should at any time hereafter, be desirous of repurchasing the said annuity, or clear yearly sum of [*first annuity*] pounds; and should give to the said [*first grantee*], his executors, administrators, or assigns, fourteen days' notice in writing, of such their or his desire; and upon the expiration of the said notice, or at any time afterwards, and upon giving fourteen days' such notice as aforesaid, should well and truly pay, or cause to be paid unto the said [*first grantee*], his executors, administrators, or assigns, the sum of [*original consideration money for first annuity, and one quarter of a year's annuity*] pounds: and also all and every sum and sums of money which shall be then [*211] *due and owing to the said [*first grantee*], his executors, administrators, or assigns, for or on account of the said an-

payment of second annuity, and all costs, second grantee will acknowledge satisfaction on his judgments, or do any further act for releasing them.

Power to repurchase first annuity on giving 14 days' notice.

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nuity, or yearly sum of [*first annuity*] pounds; and also a proportional part of the same annuity, or yearly sum, up to and inclusive of the day or time of paying the said sum of [*original consideration money for first annuity*] pounds (*u*), and should also well and truly pay to the said [*trustees*], his executors, administrators or assigns, all and every sum and sums of money which shall be then due to the said [*trustee*], his executors, administrators, or assigns, for or on account of such costs, charges, and expenses, as shall have been advanced, paid, or incurred by him or them, in the execution of the trust hereby reposed in him and them; or in or about recovering or enforcing the payment of the said annuity, or clear yearly sum of [*first annuity*] pounds, when in arrear; then, and in that case, the said [*first grantee*], his executors, administrators, or assigns shall or will accept and take the said sum of [*original consideration money for first annuity*] pounds, as and for the price of repurchase; and in satisfaction and full discharge of the said annuity, or clear yearly sum of [*first annuity*] pounds. *And* the said [*first grantee*], his executors, administrators, and assigns, on the request, and at the costs and charges of the said [*grantor*] the elder, and [*grantor*] the younger, or either of them, or either of their assigns, shall or will deliver up the said second mentioned bond and warrants of attorney for entering up judgments thereon, to be cancelled; and acknowledge satisfaction on the records of the same judgments; and release the said annuity, or clear yearly sum of [*first annuity*] pounds: *Or otherwise,* and at the option of the said [*grantor*] the elder, and [*grantor*] the younger, or the survivor of them, or his assigns, the said [*first grantee*], his executors, administrators, or assigns, shall or will assign, transfer, and set over the said second mentioned bond, warrants of attorney, judgments (if any), and annuity, or clear yearly sum of [*first annuity*] pounds, unto such person or persons, as the said [*grantor*] the elder, and [*grantor*] the younger, or the survivor of them, or his assigns, shall direct or appoint; and upon

On repurchase, bond and warrants of attorney to be cancelled;

and satisfaction acknowledged on judgments:

or otherwise at the option of grantors,

bond, warrants of attorney, and judgments, to be assigned as they shall direct.

(*u*) ["And also all sums (if any) which the said [*first grantee*], his executors, administrators, or assigns, shall have paid for additional premiums of insurance as aforesaid, and interest thereon as aforesaid."]

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such trusts, and for such purposes as he or they shall de-
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*clare concerning the same. PROVIDED LIKEWISE, (*Add similar proviso for the repurchase of second annuity,* mutatis mutandis, *the consideration being the original consideration money for second annuity, saying* "the third mentioned bond and warrants of attorney," &c.) AND *it is hereby further declared and agreed,* by and between the parties to these presents, that upon or at any time after the repurchase of both the said annuities, or the repurchase of one of them, and the determination of the other, and payment of all arrears of the said annuities, and all such sums of money, costs, charges, and expenses as aforesaid, the said plantation and other hereditaments demised, and the said bond assigned to the said [*trustee*] as aforesaid, shall for all the estate and interest of the said [*trustee*], his executors, administrators, and assigns therein, subject and without prejudice to any such sale or sales, mortgage or mortgages, as aforesaid, be held *In trust* for the person or persons who would have been entitled to the same respectively, in case these presents had not been made or executed. AND *to the intent* that these presents may be duly acknowledged, recorded, and registered, and take effect according to the laws, usage, and custom of the said island of Antigua (*x*); and for the other purposes

Power to repurchase second annuity.

Declaration that after determination of both annuities, and payment of all arrears, and all costs, &c. plantation demised and bond assigned to trustee, to be held in trust for the persons entled thereto.

Power of attorney to acknowledge the deed in Antigua, in order for it to be registered.

(*x*) As the above annuity is charged on an estate in Antigua, and as deeds and wills conveying plantations and estates in our West Indian colonies are frequently drawn and executed in England, Scotland, and Ireland, it may be of service to the majority of readers to be presented in this place with extracts of the Acts of Assembly of Antigua, and of the Acts of the General Assembly for the Caribbee Leeward Islands, relating to the registry of deeds and wills of property in the Island of Antigua, and the islands thereto adjacent and belonging: the title; the mode of barring entails, and conveying the estates of married women; the general method of conveyancing; the ceremonies requisite to the validity of conveyances executed out of the island; and to many other
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incidental points of conveyancing.† Either *purchase deeds, mort-

† As to the Constitution of the Colonies, see Abbé Raynal's Philosophical and Political History of the Settlements and Trade of the Europeans in the East and West Indies, Book xiv. &c.; 1 Bla. Com. 107—109; Callis on Sewers, 46. And as to the extension of particular

gages, deeds to bar entails, &c. conveyances in trust for creditors, &c. of plantations and estates, in most, if not all, of our other colonies, will be introduced in subsequent parts of this work. The requisite extracts will then be given from the laws of each island relative to conveyancing. But as many of the colonial laws are nearly in the same words, and as the present extracts are apparently lengthened by the introduction of information applicable to any of the colonies, the future extracts will in consequence occupy a comparatively small space; for whenever it can be done, reference will be made to the following pages.

LAWS OF ANTIGUA RELATING TO CONVEYANCES.

THE LAWS OF ANTIGUA RELATING TO CONVEYANCES.

No. 5. Register office to be established for entering warrants for land, and recording surveyor's returns and conveyances. *See* s. 4.

By an Act of Assembly of Antigua intituled "*An Act for establishing a Register's Office and the several Fees that belong thereunto,*" it is ordained and enacted by sect. 2, that a register office shall be established in this island, which shall be an office distinct and apart from all other offices; in the which shall be entered first all warrants for lands hereafter to be granted, the surveyor's return upon every such warrant recorded, and the original returned under the surveyor's hand filed; all patents, deeds of sale, leases of land, and mortgages, shall in the said

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English statutes to the Colonies, see *Rex* v. *Vaughan*, 4 Burr. 2500; *Campbell* v. *Hall*, Cowp. 204; Mr. Baron Maseres's Canadian Freeholder, Dialogue, 2; Howell's State Trials, Vol. xx. 239, 287; Edwards's History of the West Indies, Book iii. chap. 2, 2d ed.; Gloster's Preface to the Laws of Dominica; *Attorney-General* v. *Stewart*, 2 Meriv. 143, *vide post*, 224.

Formerly there was only one, but since 1816 there have been two executive governments in the Leeward Caribbee Islands, namely, a Captain General and Governor in Chief of the Islands of Antigua, Montserrat, and Barbuda;‡ and another for Saint Christopher's, (which includes Anguilla,) Nevis, and the Virgin Islands. But there are still distinct legislative assemblies for each state, which is governed by its own peculiar laws. The assembly for the Virgin Islands meets at Tortola; each of the other assemblies meets on the island from which the respective laws take their names.

[‡ The island of Barbuda is but little known, and rarely spoken of. Barbuda contains thirty-nine thousand acres, and lies in W. long. 61° 3′, N. lat. 18° 5′, and is eleven leagues from the nearest land. It is exclusively and entirely the property of Sir Bethel Codrington. In the year 1824, the number of Negroes on the Island was from 430 to 440. —*Note by Mr. B.*]

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office be *made, and afterwards* recorded therein at large; and also in the said office shall be kept one book for alienation of lands, *wherein shall be registered a brief account of what land every person possesses, relating to the other books of every parcel entered at large, and what shall at any time by any person be sold or mortgaged, from time to time, and at all times, to any other person, transporting the same from the vendor or seller, to the account of the vendee or purchaser.

And a book for alienations kept.

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Deeds made beyond sea of no effect till recorded in the island.

The passage in italics repealed by Register Act, No. 106, *sect.* 8, 18.

The defect in this act of not limiting a time for recording deeds, is supplied by No. 39, *s.* 6, 7, post, 215.

IV. And, *That no writing, lease, deed of sale, mortgage, or any other transaction relating to lands made in this island, by any other person than the register himself, or his clerks in the said office, shall be any ways binding or beneficial to any person concerned therein, either to be pleaded in law or otherwise;* as also that all and every conveyance, lease, mortgage, or other writings, touching land in this island, made beyond sea, shall be held ineffectual to all intents and purposes, and shall not be allowed to be pleaded in any of the courts of this island, until all and every such writings shall be recorded in the said register's office, in such manner and form as other deeds and writings made in the said office shall be entered and recorded.—Dated at Antigua, 13th April, 1668, 20 Car. II.

No. 39.

PREAMBLE.

Difficulty of tracing the title to lands claimed under patent, and expediency of preventing litigation.

By an Act of Assembly of Antigua, intituled, "*An Act for the establishing and confirming of Inhabitants of this Island in their title to their Lands.*" FORASMUCH as the estates of all persons do most and chiefly consist of lands granted to them, or which they may have purchased from such as may have held their lands only by force and virtue of such grants, or that it hath so happened that lands so granted have legally descended to them; yet, inasmuch as all such pretences give them but a weak and insufficient title to the same, in regard many of the inhabitants have no patents under any public seal appointed by his Majesty, neither is it known when any such seal will come, notwithstanding our present captain general, *William Stapleton*, hath taken all possible care to procure one for that purpose, so that it is thought to be matter of very great concern, as well for the quieting the minds of all his Majesty's good subjects, that now are in the management and possession of any lands upon the island, as for the future preventing litigious suits and controversies touching lands, their grants, alienations, or descents, to all such as are planters, or may for the future come to be freeholders upon this island, that an act pass for giving a firm and unquestionable right and title to the same:

ACT.

Proprietors and possessors of lands enjoying them five years quietly, to be

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II. Be it therefore ordained and enacted, and it is hereby enacted and ordained by the governor, council, and representatives of this *island, that if any person or persons, proprietor or possessor of any lands, tenements, or hereditaments within this island, have, and shall for the future quietly, without lawful interruption, enjoy the same seve-

rally or successively by the space of five years, that such person or persons so possessing shall have good right and title to the same against all men whatsoever, and during the estate thereof he or they are possessed, EXCEPTING such as shall prosecute their titles to the same within two years after the date of this act; and such married woman, and persons under the age of twenty and one years, and of unsound memory, prosecuting their respective titles within one year after their being married, becoming of age, and sound memory, excepting also all such persons as are in His Majesty's service, or in durance in foreign parts, or by any usurped authority.

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deemed to have a good title, except against persons prosecuting their title within two years after the act; married women, minors, &c. one year after removal of disability; persons absent in the king's service, durance abroad, &c.

V. And forasmuch as by an act of this island, bearing date the thirteenth day of *April*, one thousand six hundred and sixty-eight, intituled *An Act for the establishing a Register's Office in this Island*, it is provided and enacted, that all deeds and conveyances of and relating to any lands in this island, shall be duly entered and enrolled in the said office, and that all conveyances and other acts in law relating to land, and not registered therein as aforesaid, shall be void, and not pleadable in any of the courts of this island; but yet no time is limited in the said act for effecting the same, so that many disputes may arise thereupon, to the great disquiet and prejudice of the inhabitants of this island; for prevention whereof,

RECITAL of old register act, No. 5.

VI. It is ordered and enacted by the authority aforesaid, that the said act, and every clause therein, shall be duly followed and pursued; and that all persons who shall for the future set, or by any other act by law transfer their right of any lands, tenements, or hereditaments within this island, shall cause the deeds and other acts aforesaid, to be enrolled, registered, and recorded in the said register's office, within twenty days after passing the same, and that all such deeds so passed, and not recorded in the time aforesaid, shall be utterly void to all intents, constructions, and purposes, and not pleadable in any of the courts of this island; any law, custom or usage to the contrary in any wise notwithstanding. This limitation to extend only to such as are resident in this island at the time of conveyance, and no other.

Deeds executed in ANTIGUA, not recorded in 20 days, void. *The enlarged period for registering, by* No. 106, *sect.* 15, *is merely a provisional opening for the remedy of omissions at that time, and not a supersedure of this clause, which is confirmed by* No. 198, *sect.* 3.

VII. And that all conveyances, contracts, bargains and agreements, relating to any lands or tenements in this island, which shall happen to be passed, conveyed, and confirmed by any act in law in *Europe*, shall be enrolled, registered, and recorded in the said office within *one* year after passing the same, or else shall be void and not pleadable as* aforesaid. Provided the conveyance in *Europe* be not lost at sea, or otherwise intercepted within the said time, which interception or loss to be made out by sufficient authority, certificates, or evidences.

Deeds executed in EUROPE, not recorded in *a year*, void, except in case of accident in transmitting them.

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XI. And for the avoiding of further disputes about the titles of land, it is hereby further declared and enacted by the authority aforesaid, that in actions concerning the titles of lands, it shall be a good plea in

By No. 270, *sect.* 2, *the time allowed for registering deeds*

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executed out of ANTIGUA *is* two years.

Five years' possession a good bar:

except against infants, &c.

bar to such action, for the defendant to allege that he and they, whose estate he hath, have been in quiet and peaceable possession of the said land in question for and during the space of five years, and this plea duly entered shall bar the plaintiff or demandant, UNLESS he can disprove the same, or make it appear that the said five years' quiet possession incurred during the time that the said plaintiff or demandant was under the age of twenty-one years, a woman under coverture, or of unsound memory, or that the defendant or tenant held the same as his attorney, tenant, servant, or overseer, by virtue of some particular estate for years, life, or in tail, which, at or before the time of the action brought, was expired.

RECITAL. The necessity of fixing one legal mode of making claims.

XII. And forasmuch as all persons are by this act limited and appointed certain times wherein they are to make their claims to lands and tenements in this island, but that it is not therein ascertained and appointed in what manner and how such claims are to be made to lands and tenements in case the judges of the several courts of law should differ or vary in judgment and opinion in manner of claim, or allow of any other claim than is hereafter mentioned and declared: And to the intent that the same may be ascertained, and the possessors of the lands and tenements assured, how and in what manner persons having or laying claim to any lands or tenements in their possession, and also all persons having right or title to lands or tenements, may for the future know how to demand and claim their right in such cases, and that the judges of the respective courts of Common Pleas for the future may not vary therein; the deputy governor, council, and assembly have thought fit to declare, and they do hereby show and declare, that all manner of persons whatsoever, that are concerned to make claims to any lands or tenements within this island, so as to make their claims effectual, are to make claim by their action at law, duly entered in the offices of the courts of that *Precinct* where the lands and tenements are, according to the former practice and rules of the said courts of the *Precinct;* to which action the tenants or persons in possession are to receive summons from the said courts; and that all judges and courts of Common Pleas do allow of no other claim to any land or tenement for any person plaintiff in any suit or *suits before them, than what was to be made by their action on record and summons given in manner aforesaid, and not otherwise; any law, custom, usage, or practice to the contrary notwithstanding.

ACT. Claims to be made by action at law, and not otherwise.

No. 541, *sect.* 2, *recognizes the abolition of separate precincts.*

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RECITAL. Practice of reviving suits every five years vexatious.

XIII. And whereas many persons having or pretending right or title to lands or tenements in the possession of others, having once made their claim within the time limited and appointed in this act, may for ever hereafter keep their pretence of right or title to the lands, by bringing their action or actions by way of claim at law once in five years, and so again in five years, and so sue and trouble the persons in pos-

session for ever: The authority aforesaid, for prevention and removal of so great an inconveniency, do therefore declare and enact, and it is hereby declared and enacted, that all persons whatsoever, that shall hereafter make their claim to any lands or tenements within the time limited within this act, do, by the said action, or some other action, if brought in the five years then next after, bring the same to trial, and the same trial to be conclusive and definitive on the plaintiff's part for ever, and never to bring any action thenafter for the same, but to be for ever barred: any law, usage, custom, or practice to the contrary notwithstanding.—Dated 9th January, 1676, 27 Car. II.

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ACT.

Action to be tried in five years after claim; and, if lost, to be decisive for ever.

No. 83.

By an Act of Assembly of Antigua, intituled, "*An Act for quieting the Inhabitants of this Island in their present Possessions, and preventing litigious law suits,*" it was enacted by sect. VII. that it shall and may be lawful for the future, where the husband stands possessed of his wife's inheritance, together with his wife, under their hands and seals, to pass away the said wife's inheritance by any manner of deed whatsoever; and the person or persons to whom the same is past shall have, hold, and enjoy the same, according to the limitations specified in any deed aforesaid, the same being hereby declared to be good and effectual in law, when recorded in the register's office, according to the act for the same, in as good and ample a manner as though the same were past by way of fine and recovery before any of the judge or judges in *Westminster Hall*,† or otherwise; any law, usage, or custom to the contrary notwithstanding.

Wife's inheritance may be conveyed by husband and wife's deed; [Extended to "any other estate of freehold," No. 32, *post*, 227; No. 270, *post*, 231.]

Such deed when registered to be as effectual as fine and recovery.

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† Although the courts in England have no jurisdiction over lands in our West Indian colonies, yet a fine or recovery of lands there levied in the court of Common Pleas at Westminster, is deemed by the colonial courts to have the same effect as if the lands had been within the proper jurisdiction of the court. But as to Antigua, and the islands adjacent and thereto belonging, the deeds declaring the uses, making the tenant to the præcipe, &c. if executed out of Antigua, must be registered there within two years after the execution. Act of Assembly of Antigua, No. 270, s. 2. When fines were formerly levied or recoveries suffered here of lands in the colonies, it was effected by stating the lands to have been situate within the jurisdiction of the court here; thus, "in the island of Antigua, that is to say, in the parish of Saint Mary, Islington, in the county of Middlesex." *Forster* v. *Pollington*, Barnes's notes, 216, 3d ed. Wilson on Fines, 57, 4th ed. Stokes on the Colonies, 426. In some modern law books, a fine is said to be "sometimes levied" and a recovery "occasionally suffered" here of lands in the West Indies. However, there has not been an instance

Fines or recoveries here of lands in our West Indian colonies valid.

No modern instance of such a fine or recovery.

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Wife to be examined touching her free assent, which must be certified by judge. *The part of clause printed in italics, repealed by Register Act*, No. 106, *sect.* 22.

*VII. Provided the said wife be first examined before one of the judges of this island, that she does not the same with any compulsion, dread, or fear of her husband, but of her own voluntary act and will; and the judge before whom such examination is taken, is to certify the same under his hand upon the same deed; *provided the purchaser do really and* bonâ fide, *without fraud, pay for the same the true intrinsic value of the said purchase, or one half part at least.*

A deed having the same effect as to the Leeward Caribbee Islands, a fine or recovery would be a useless expense.

of such a fine or recovery for a considerable number of years. For more than a century past it has been perfectly unnecessary, and whenever it has been done, as to any of the Leeward Caribbee Islands, a useless expense has been incurred; as a deed duly acknowledged and registered, and when made in England or Ireland, enrolled in the court of Chancery of that kingdom where made, according to the provisions of the acts above stated, has the same effect as such a fine and recovery and declaration of the uses. See Act of General Assembly of the Leeward Caribbee Islands, No. 32, s. 3 & 5, *post*, 227, 228, and Act of Assembly of Antigua, No. 270, s. 1, *post*, 231. But notwithstanding enrolment in England or Ireland, the deed with the acknowledgment, examination, and certificate thereon, must be recorded at length in the register's office of Antigua, within two years after the execution. No. 270, s. 2 & 4, *post*, 232—3. No. 475, s. 58, *post*, 239. For which purpose the deed must be acknowledged by the grantor, or his attorney, before the registrar of Antigua; No. 106, s. 9, *post* 220; and under No. 475, s. 58, *post*, 238, there should be an accompanying affidavit of the execution, and a certificate attesting the same by the mayor, &c.

Advantages of this mode of destroying entails, &c.

One of the advantages attending this judicious alteration of the law is, it enables a tenant in tail at any time to bar his issue in tail, and the remainders over, without the concurrence of the tenant of the immediate freehold: whereby it facilitates the sale of estates, which in all commercial countries is an object of primary importance. There will be a future opportunity of resuming this subject as to our other colonies. In this place it is impossible wholly to restrain the feelings of melancholy mixed with pleasure, raised on seeing the colonies of a great and enlightened nation precede their parent country in the path of rational legislation, by rendering unnecessary the fictitious proceedings in a common recovery, and which the suggestion of the incomparable author of the Commentaries on the Laws of England, the ridicule of the learned observer on the more ancient statutes, the recommendation of the industrious author of the Touchstone of Common Assurances, have not yet induced the legislature of England to follow, by enacting similarly wise laws, and thereby imitating the philosophical example of her children. See 2 Bla. Com. 360. Barrington on the Ancient Statutes, 131, 448, 5th edit. Sheppard's England's Balme, 112, edit. 1657. Wynne's Eunomus, 196, 5th edit.

Our most philosophical legal writers have recommended the abolition of common recoveries.

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*IX. And whereas many persons heretofore deceased stood possest of a good quantity of lands and tenements, and a number of negroes, some of which persons made their wills and testaments, nominating their executors therein, and others died intestate, leaving their negroes, and other goods and chattels, to be disposed of by the administrator or administrators to be appointed; which said executors and administrators, by virtue of their executorship and administration, inventoried and appraised the said negroes, and disposed of them as other chattels, which oftentimes proved a ruin to the interest or estate, and left the widow and children in a bad condition:

RECITAL. Executors, &c. had disposed of negroes as chattels, which frequently proved ruinous to estates.

X. For the prevention thereof for the future, be it and it is enacted by the authority aforesaid, that all negro slaves and other slaves, after the date of this act, shall and are hereby declared to be inheritance, and affixed to the freehold, and the widow capable of being endowed thereof: Provided always, that any executor or administrator may inventory the said negroes, but not take them into his custody; to the intent, that if there shall not be sufficient goods and chattels to pay the deceased's debts, that then the said negroes are liable to be taken for payment of the said debts, and be as chattels to that purpose, and *not otherwise.† Dated at Antigua, 21st July, 4 Will. & Mary, 1692.

ACT. Negroes inheritance, and the widow dowable of them: [*Vide post*, 224, *sect.* 3,] proviso, that on deficiency of assets, negroes shall be chattels for payment of debts, and no other purpose.

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No. 106.

By an Act of Assembly of Antigua, intituled "*An Act for the better regulation and settlement of the Register's Office*," by sect. 9, it is enacted, that from henceforth no bargain, sale, mortgage, lease, conveyance, assurance, or other instrument of writing, of what nature, kind, or quality soever (wills only excepted), whereby or wherein any estate in lands and tenements shall be assured, passed, conveyed, set, let, confirmed, released, altered, barred, enlarged, assigned, or any ways transferred from one subject to another, shall be good or effectual in law or equity, or any ways pleadable, or allowed to be pleaded in any court on this island, unless the same be acknowledged by the vendor, donor, lessor, or other person or persons conveying or transferring the same, or by some person or persons lawfully empowered to acknowledge the same, before the register himself for the time being, or such lawful deputy as in and by the said act he hath power and authority to depute and appoint; which said acknowledgment shall be endorsed on the back side of the said deed, conveyance, or other instrument of writing, by the said register or his deputy, together with the day of the month and year of our Lord, in words at large, and afterwards signed by the register's own hand, or the hand of his deputy, to be appointed as aforesaid.

No conveyances of *land*, (except by will) to be good till acknowledged before register by grantor, or by some authorized person. *And by* No. 198, *post*, 229, *conveyances of slaves are to be registered. See also* 59 *Geo.* III. *c.* 120, *post*, n. (*q*)

Acknowledgment to be endorsed and attested by register.

X. And be it further enacted by the authority aforesaid, that after

When acknow-

† *Vide* 5 Geo. II. c. 7, s. 4, *post*, 224.

such acknowledgment and indorsement as aforesaid, the said deed, conveyance, or other instrument of writing, before the said register shall part with the same out of his said office, shall be duly and fairly registered and entered at large in a book made of good thick and durable paper, to be kept for that purpose.

XI. And to prevent all disputes which may happen about the priority of entering the said deeds, conveyances, or other instruments of writing, or any of them, the time of acknowledgment shall be deemed, esteemed, and taken to be the time of the entry or registry thereof.†

XII. And be it further enacted by the authority aforesaid, that from henceforth no will wherein or whereby any estate in lands or tenements are devised, shall be allowed to be pleaded or admitted for evidence in any court of law or equity, until the same be duly proved before the governor in chief, lieutenant, or deputy governor, or such * other person or persons having power to take the probate of wills, and entered at large in the said register's office.

XIV. And be it further enacted by the authority aforesaid, that copies of all bargains, sales, mortgages, or other deeds, or instruments of writing, and of all wills, warrants, letters patent, or other instruments of writing, which at any time heretofore have been, or hereafter shall be, duly entered and registered in the said register's office, pursuant to any clause in the said act, intituled, *An Act for establishing a Register's Office, and the several fees that belong thereunto*, or in this present act directing the same, and attested by the said register, or in his absence, by his lawful deputy for the time being, shall be as good evidence and allowed to be pleaded in any court, as if the original was [illegible] except leases, which being temporary in their own nature, the record shall be equal to the original in validity no longer than one year after the expiration of such term in such lease mentioned, or till the first court after such year expired, if no court within a year after the expiration, as aforesaid; to the end that no person may have cause after the original is compared with and cancelled.

XIX. And be it further enacted by the authority aforesaid, that all instruments in writing, between subject and subject, already recorded in the register's office, shall be taken, esteemed, and deemed as actually [illegible] notwithstanding any words that shall be contained in any of the aforesaid instruments of writing do seem to the contrary; and for the future all instruments of writing made in this island, relating

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† Same as to conveyances of slaves. No. 198. s. 4. S. *post*. 230. Deeds or wills, barring estates tail, &c., No. 270. s. 4. *post*. 234. the time of delivery at the register's office, is the time of registry.

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unto lands, bonds, letters of attorney, (wills excepted,) shall be actually indented by the register or his deputy; and if it shall so happen, that any deed or instruments of writing made in this island, relating unto land, written by any other person than the register, or his deputy, and brought to be recorded in the register's office, and is not actually indented, the said register or his deputy shall indent the same before the recording thereof.

A recorded conveyance equal to livery and seisin.

XX. And whereas there may arise many disputes concerning the livery and seisin of lands, tenements, and houses purchased, as the course of the common law requires in such matters; for the prevention whereof, and to ascertain the same, be it enacted by the authority aforesaid, that all instruments of writing heretofore made, relating unto lands, tenements, and houses, and recorded in the register's office, shall be to all intents and purposes equal to a livery and seisin, and shall be *tantamount* to the same.

Future deeds to operate without livery; pleading the registry as good as livery.

XXI. And all deeds made in this island for the future, and recorded *in the register's office, shall operate according to the purport of the said deeds, without any livery and seisin; and pleading the said deeds to be registered in the register's office, shall be adjudged in any court of this island as livery and seisin, and to be as good in law by such pleading and shewing, as aforesaid, as though livery and seisin were actually perfected, according as the law in the strictest sense can allow or construe the same; any law, usage, or custom to the contrary notwithstanding†. Dated at St. John's, 3d November, 1698, 10 Wm. III.

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Lease for a year of colonial estates unnecessary.

† The operative words generally introduced in conveyances of freehold colonial property are, "hath granted, bargained, sold, enfeoffed, and conveyed." The lease for a year is sometimes omitted; indeed it is always unnecessary, and is a useless expense, [*sed vide post*, Vol. 5, p. 543], because the estate may pass by the deed as a feoffment without livery of seisin, or as a grant without attornment, whether the deed be executed in or out of the island. *Supra*, s. 20 and 21, and *vide post*, p. 231, No. 270, s. 1. In the conveyance of large estates the lease for a year is often used. Mr. Shepherd says, the lease and release prevails, as evidence of the law would be necessary to establish the validity of the conveyance out of the island. Practice of St. Vincent, 118. This reason is very unsatisfactory, as the question of title cannot arise in any court out of the island, excepting on appeal to the king in council, *Attorney General* v. *Stewart*, 2 Meriv. 156, where alone an appeal lies from the territorial tribunals of the plantation, 3 Wooddes, Lect. 395, and where the local laws of the colony are admitted as a matter of course; and it is admitted by our courts of law, (who have no immediate jurisdiction but only incidentally, as in cases of breach of covenant

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At this period it is requisite, in order to a perfect understanding of the subsequent laws of Antigua, to introduce the following acts of General Assembly, now in force in the different islands subject to the respective laws of ANTIGUA, MONTSERRAT, NEVIS, SAINT CHRISTOPHER'S, and the VIRGIN ISLANDS, so far as the general laws are not altered by the particular laws of the several islands.

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*THE LAWS OF THE LEEWARD CARIBBEE ISLANDS RELATING TO CONVEYANCES.

No. 28.

Each island to retain its laws as to local circumstances.

General assemblies to make general laws.

By an act of the commander in chief of all the Queen's Leeward Caribbee Islands in America, the General Council and General Assembly of the same, intituled, "*An Act to settle General Councils and General Assemblies for the Caribbee Islands in America, and to secure to each particular Island their own peculiar Laws and legal Customs,*" it is enacted, sec. III., "that all the laws and legal customs now in force in each and every the Caribbee Leeward Islands, and respecting only the circumstances of the same, be and remain in their full force and virtue." And by sec. IV., the general council and general assembly are empowered "to make, enact, and ordain such general laws and ordinances, as may be proper and convenient for all the Caribbee Leeward Islands." Dated in Nevis, 7th June, 4th Anne, 1705.

The acts of this assembly more immediately relating to the subject of this work, are the following:

No. 31.

An Act for preventing tedious and chargeable law suits, and for declaring the rights of particular tenants.

Preamble.

WHEREAS law suits and controversies frequently arise between the inhabitants of these islands, principally occasioned by the different nature and circumstances of our estates from those in England, whereby it sometimes hath happened, through the partiality of some and ignorance of others, that contradictory judgments have been given in cases founded on the same rules and principles of law and reason; for the redressing of which mischiefs, and establishing a constant and certain uniformity in the proceedings of the courts of the several islands under this government, and for declaring the rights of particular tenants in these islands:

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for further assurance, &c.) that lands pass by *grant* alone in Jamaica. *Goffe* v. *Ekin*, 2 Mod. 240. So it is admitted here, on the same principle, that under the Irish statute, 9 Geo. II. c. 5, s. 6, *ante*, Vol. 1, p. 397, a recital of a lease for a year in a release of lands in Ireland is sufficient, although in fact no lease be prepared. *Daly* v. *Kelly*, 4 Dow. Par. Cas. 435.

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II. We your Majesty's most dutiful and loyal subjects, the commander in chief of your Majesty's Leeward Caribbee Islands, the General Council and General Assembly of the said Islands, now met at Nevis, do humbly pray your Majesty that it may be declared, and it is hereby declared by the authority aforesaid, that the *common law of England*, as far as it stands unaltered by any written laws of these islands, or some of them, confirmed by your Majesty, or some of your royal predecessors in council, or by some act or acts of parliament of the kingdom of England, extending to these islands, is in force in each of these your Majesty's Leeward Caribbee Islands, and is the certain rule whereby the rights and properties of your Majesty's good subjects inhabiting these islands, are and ought to be determined; and that all *customs or pretended customs or usages contradictory thereunto, are illegal, null, and void †.

The common law of England to be in force, except where altered by laws of the islands.

Pretended customs to the contrary void.

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III. And be it, and it is hereby declared, that all negroes and other slaves, coppers, stills, and all cattle, horses, asses, commonly used and exercised upon and about any plantation or plantations, and all other plantation utensils, are inheritance, and affixed to the freehold, and are, with the plantation, descendible to the heir at law, and the widow dowable as well of them and every of them, as of the lands and tenements whereof her husband died seised ‡; and that such widow may

Negroes, &c. used with plantations, made freehold. *Vide ante*, 219, sect. 10.

Widow dowable out of them.

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† It has been determined by the King in Council, that the Statute of Charitable Uses does not extend to the Island of Nevis; Howell's State Trials, xx. 289; and by the Court of Chancery in England, that the statute does not extend to the Island of Grenada, or to any other colony, it being a law of local policy, adapted solely to the country in which it was made. *Attorney-General* v. *Stewart*, 2 Meriv. 160, 163. Nor do any other laws bind the colonies excepting such as are applicable to their situation and condition, unless expressly enacted, Howell, xx. 189. *Vide* 7 & 8 Will. III. c. 22, 6 Geo. III. c. 12. Therefore the bankrupt laws, founded on the peculiar jurisdiction vested in the Lord Chancellor of England (and not transmissible otherwise than by some special provision), the law of tithes, the jurisdiction of spiritual courts, the poor laws, the rule prohibiting two persons, being in partnership, from underwriting the same policy of insurance, and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force. 2 Meriv. 150, 152. 1 Bla. Com. 107. See the Antigua Act for the Prevention of Frauds and Perjuries, No. 438, *post*, p. 235. In Antigua an act has lately passed for the relief of Insolvent Debtors.

The Stat. of Charitable uses, &c. does not extend to the colonies.

‡ By the English statute 5 Geo. II. c. 7, intituled, "*An Act for the more easy Recovery of Debts in his Majesty's Plantations and Colonies*

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*and shall recover the mesne profits of such plantation, negroes, cattle, horses, asses, or other hereditaments whereof she shall be so endowed, against the party or parties that have received or detained the same, in damages, by action upon the case in any court of record in that island, wherein the estate, whereof dower is so recovered, lies, or by suit in equity against the party or parties, their executors or administrators, that have received or denied the same.

Dwelling house only to be parted, the plantation and works to be enjoyed by the heir and widow in undivided parts, and the profits apportioned.

IV. Provided always, that the said plantation, or the works thereon being, shall not be divided or otherwise parted than by allotment of the third part of the dwelling house with its appurtenances and necessary conveniences, to the tenant in dower for her habitation or convenient reception upon the said plantation, when she shall think fit to repair thereunto; which third part of the dwelling house, the provost marshal or his lawful deputy, upon application to him made, shall set out to such tenant in dower, and shall forthwith put her in quiet and peaceable possession of the same; and that none of the negroes or other slaves, coppers, stills, cattle, horses, asses, or other plantation utensils whatsoever, to such plantation belonging, shall be carried off, or employed from the said plantation, otherwise than for the immediate service thereof, by such tenant in dower, or by the heir, or him or them in reversion or remainder, but that each of them shall join in carrying on the interest for the best advantage of all the parties concerned.

Devise to a widow of third part of an estate to bar the dower, unless the widow accept the dower instead of the devise.

V. And be it hereby declared and enacted, that where any person hath or shall by his last will and testament in writing, devise any part of his estate, or of the profits thereof, amounting in value to a third part of his estate, whereof she was dowable, and omitting to declare such devise to be in bar of her dower, shall devise the rest, residue, or

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Houses, lands, negroes, &c. in the plantations, liable to satisfy debts.

in America," it is enacted, s. 4, "that the houses, lands, negroes, and other hereditaments and real estates, situate or being within any of the said plantations belonging to any person indebted, shall be liable to and chargeable with all just debts, duties, and demands of what nature or kind soever, owing by any such person to his Majesty, or any of his subjects, and shall 'and may be assets for the satisfaction thereof, in like manner as real estates are by the law of England liable to the satisfaction of debts due by bond or other specialty, and shall be subject to the like remedies, proceedings, and process, in any court of law or equity in any of the said plantations respectively, for seizing, extending, selling, or disposing of any such houses, lands, negroes, and other hereditaments and real estates, towards the satisfaction of such debts, duties, and demands, and in like manner as personal estates in any of the said plantations respectively are seised, extended, sold, or disposed of, for the satisfaction of debts.

remainder of his estate to any other person or persons, that such devise to his wife shall be taken and construed to be a complete bar of her dower, unless such devisee, being of full age, shall disagree to the said devise, and claim or demand her dower within three years after the death of her husband, or after her having arrived at the age of one and twenty years.

This act not to affect an act of the island of Nevis, concerning intestates. [*226]

*VI. Provided always, that this act, nor any thing therein contained, shall extend or be construed to extend to impeach or make void an act made for provision of younger children of fathers dying intestate, intituled, *An Act for making the negroes, coppers, mills, and stills of intestates' estates, chattels;* which act was made by the President and Council of Nevis, executing the office of Lieutenant-General and Assembly of the Island of Nevis, on the twenty-fifth day of March, in the year of our Lord one thousand six hundred and ninety-nine, and stands confirmed by his late Majesty King William the Third in council; but that the same, and every clause, matter, and thing therein contained, shall be and remain in full force; and that the several islands under this government shall be at liberty to enact the same law, any thing in this act to the contrary, or seeming to the contrary, in anywise notwithstanding†.

In lands not planted, dower may be set out by a jury.

VII. Provided also, that where any person is entitled to dower of any parcel of land unsettled [*i. e* not planted], that a warrant shall go out to the Provost Marshal of the island wherein such land lies, at the prayer either of the tenant who is so entitled to dower, or of the party or parties in reversion or remainder, requiring him, within eight days from the day of the date of the said warrant, to impannel a jury of twelve good and lawful freeholders of such island wherein such land lies, who shall, upon their oaths, set out the third part of the said land to the party so entitled to dower, by her to be held in severalty, by metes and bounds, any thing in this act or any other law or statute contained to the contrary notwithstanding. Dated at Nevis, 20th June, 1705, 4th Anne.

No. 32.

ENLARGED as far as respects ANTIGUA, by No. 270, *post*, p. 231, and No. 537, *post*, p. 243.

An Act for the supplying the want of fines and recoveries in these Islands, and for making any deed or deeds, duly executed and acknowledged before any of her Majesty's Justices of the Court of Common Pleas in the King-

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Slaves are chattels in some of the colonies, and real estate in others.

† It has been determined by his Majesty in Council, that slaves, beasts, and moveable utensils, are chattels in St. Christopher's; Dalrymple's MS. vol. 1. 75; and slaves are chattels in the Bahamas. Shephard's Practice of St. Vincent, 119. But in most, if not all of the other colonies besides Nevis (in case of intestacy), Saint Christopher's and the Bahamas, slaves are real estates.

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PREAMBLE.

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dom of England or Ireland, or of any of these Islands, equivalent to a fine and recovery, or fines and recoveries, duly and regularly levied and suffered in any of her Majesty's Courts of Record at Westminster.

WHEREAS fines with proclamations and common recoveries are become the common assurances of your Majesty's Kingdom of England, at least such a necessary part thereof, as without them the inheritance of femes coverts, or their right or title to dower, or any other estate of freehold, nor estates of tenants in tail, general or special, or the reversion and reversions, remainder and remainders thereupon depending, cannot be barred:

II. And whereas such fines cannot be duly levied in these islands, for want of proper offices; or common recoveries well suffered, for want of set days for the return of writs, or for the appearance of the parties to such recoveries, the courts of law in these islands usually holding but one day, or two at the most; for remedying which mischief, and to the intent that the want of fines and recoveries in these islands may be effectually supplied, by making other conveyances, attended with particular circumstances hereinafter mentioned, equivalent thereunto:

III. We your Majesty's most dutiful and loyal subjects do pray your most excellent Majesty that it may be enacted, and be it and it is hereby enacted by the commander in chief of these your Majesty's Leeward Caribbee Islands in America, the General Council and General Assembly of the said Islands now met at Nevis, and by the authority of the same, that a deed or deeds in due form of law, made and executed by the husband and wife of the plantations, lands, and tenements, negroes, and other hereditaments of the wife, or of any plantation, lands and tenements, negroes, and other hereditaments whereof the husband was solely and in his own right seised at any time during the coverture, or whereof the husband, or husband and wife, were seised in right of the wife, or the husband jointly with the wife; or by tenant in tail, general or special; and by the party or parties, and each of them, from whom the interest passes, acknowledged before some of her Majesty's justices of the Court of Common Pleas in the Kingdom of England or Ireland, or of any of your Majesty's Leeward Caribbee Islands, wherein such plantation, lands, tenements, negroes, and other hereditaments do lie; shall to all intents and purposes be as effectual and valid in the law, to pass all the estate, right, title, interest, and claim of the party or parties, and of each of them, to such deed or deeds, in or to all or any the plantation or plantations, lands, tenements, negroes, or other hereditaments, by such deed or deeds granted, conveyed, or made over, or thereby intended to be granted, conveyed, or made over to the person or persons, bargainee, or bargainees, grantee or grantees, in the said deed or deeds mentioned, their heirs and assigns for ever, to whom or to whose use any estate in such plantation or plantations, lands, tenements, ne-

Deeds *acknowledged by the parties from whom the interest passes*, before the justices of the Common Pleas in England, &c. shall bar femes covert and tenants in tail, as fully as any fine and recovery, *vide ante*, 218. *By act of* ANTIGUA, No. 537, *this is extended* as far as respects ANTIGUA, *to acknowledgment before* any justice of the King's Bench or Baron of the Exchequer *in England or Ireland.*

By No. 270. s. 2. 3. extended, *for* ANTIGUA,

groes, or other hereditaments, is by the said deed *or deeds limited, bargained, sold, granted, or conveyed, according to the several limitations in the said deed or deeds contained, as if the party or parties to the said deed or deeds, from whom the interest moves, had levied a fine or fines with proclamations, or suffered a common recovery or recoveries of such plantation or plantations, lands, tenements, negroes, and other hereditaments in any of their Majesties' courts of record at Westminster, and duly executed deeds leading the uses of such fine or fines, or declaring the uses of such recovery or recoveries, to be to such bargainee or bargainees, grantee or grantees, their heirs and assigns for ever, to whom or to whose use such plantation or plantations, lands, tenements, negroes, and other hereditaments are, by the deed or deeds so to be executed and acknowledged, as is above mentioned, limited, and conveyed, or that the same and every part thereof had been bargained, sold, conveyed, or set over by any of the firmest deed or deeds, conveyance or conveyances, or assurance or assurances of the law, that could be advised or devised by council learned in the law.

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in a local *view*, universally; *so as the acknowledgment be before any* lord of the session *or* sheriff *in* SCOTLAND, and, in other places, *before the* chief civil, military, or judicial officer prescribed; *and so as the deed be registered in* ANTIGUA *within two years.*

IV. Provided always, that the wife, who is party to any such deed or deeds, be of full age at the time of the execution thereof, and be privately and apart examined by the judge, before whom such deed or deeds is acknowledged, whether she do execute the same freely, voluntarily, and without fear, threats, or compulsion, of or by her husband used; which examination of the wife shall be indorsed, together with the acknowledgment of the party or parties, from whom the interest by the said deed or deeds pass: and such acknowledgments shall be subscribed by the judge before whom the acknowledgment of such deed or deeds is taken, and by and before whom such wife is privately examined.

Every wife party to such deed, to be of age, and examined apart: such examination to be indorsed on the deeds, and subscribed by the judge, and enrolled at length, within six months, in the secretary's office, if acknowledged in one of the islands; but if in England or Ireland, to be enrolled in the Court of Chancery of that kingdom where acknowledged within six months afterwards.

V. And be it further enacted by the authority aforesaid, that all and every deed or deeds so executed and acknowledged as aforesaid, shall be enrolled at length in the secretary's or register's office of that island, wherein the estate so granted or conveyed lies (if the said deed or deeds be executed and acknowledged in any of these your Majesty's Leeward Caribbee Islands) within six calendar months after the acknowledgment of such deed or deeds; and in case the said deed or deeds shall be executed and acknowledged within either of your Majesty's kingdoms of England or Ireland, that the same shall be enrolled at length in the High Court of Chancery in that kingdom, wherein the same was executed and acknowledged, within six calendar months of the acknowledgment thereof; and that the acknowledgment [*i. e.* the certificate of acknowledgment] of such deed or deeds so *subscribed by the judge before whom the same was taken (as before is directed) shall be a sufficient proof of the due execution of the said deed or deeds; and the record, or an exemplification, or attested copy of such deed or deeds, shall

By No. 270. *s.* 2. 4. *every deed conveying hereditaments in Antigua, executed out of Antigua, must,* without exception, be recorded at length in the

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be admitted and allowed to be given in evidence upon any trial at law, or hearing in equity, where the original deed or deeds is or are mislaid, and cannot be procured; any law, statute, or usage to the contrary in anywise notwithstanding. Dated in Nevis, 21st June, 1705, 4th Anne.

Having stated the general laws of the Caribbee Leeward Islands, so far as they are not altered by the particular laws of each island, it is necessary to return to the subsequent particular.

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No. 138.

By an Act of Assembly of Antigua, intituled, "*An Act supplementary to an Act* intituled, An Act for the better Regulation and Settlement of the Register's Office of the Island of Antigua, dated the 3d day of November, 1705, and for Altering and Amending the said Act," by sect. 3, it is enacted, "that from and after the date of this act, all bargains, sales, gifts, grants, mortgages, conveyances, or other assurances, of what nature or kind soever (wills only excepted) of any slave or slaves, shall be absolutely void, to all intents and purposes whatsoever, both in law and equity, unless the same be in writing, and acknowledged by the vendor, donor, or other person or persons conveying the same, or by some person or persons thereunto lawfully authorized, by writing before the register of deeds of this island, or his lawful deputy, and also entered and registered in the register's office of this island, together with such acknowledgment, within twenty days next after the date of such bargains, sales, gifts, grants, mortgages, conveyances, or other assurances; such acknowledgment to be written thereon by the register, or his deputy, with the day of the month and year when acknowledged, in words at length, and signed by the said register, or his deputy.

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*IV. Provided always, that if any bargains, sales, gifts, grants, mortgages, conveyances, or other assurances whatsoever, of any slave or slaves, shall hereafter be executed by any person or persons, off this island, and proof of the execution thereof, made in manner hereinafter mentioned, and the same with such proof thereof recorded in the register's office of this island, within the time hereafter limited; that is to say, within twelve calendar months next after the date thereof, in [*sic*] the same are executed in any of the Leeward Islands; and if executed in Europe, or any other country or place whatsoever, within two years next after the date thereof; such bargains, sales, gifts, grants, mortgages, conveyances, or other assurances, shall be good and

effectual; any thing in this act contained to the contrary notwithstanding.

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V. And be it further enacted, by the authority aforesaid, That the proof of the execution of all bargains, sales, gifts, grants, mortgages, conveyances, or other assurances whatsoever, of any slave or slaves which shall be executed off this island, shall be by oath in writing of any one of the witnesses thereto, before the person who shall be in chief command in this island, or before any one of the judges of the Common Pleas of the said island, or before the register of the said island, or his lawful deputy; which said oath shall be indorsed on the back of such bargain, sale, gift, grant, mortgage, conveyance, or other assurances, and subscribed by such witness.

Conveyances of slaves executed out of Antigua to be proved by oath of one of the witnesses, before the register, &c. see No. 270, sect. 3, 4, *post*, 232—3. No. 475, sect. 58, *post*, 238, and see 59 Geo. III. c. 120, *post*, n. (*q.*)

VI. [Act not to extend to imported slaves sold as merchandize.]

VII. [After acknowledgment of conveyance, register not to part with it till entered at length.]

VIII. [Time of acknowledgment to be deemed the time of entry. Register to insert on deed memorandum of date of its delivery to him, attested by one witness, and signed by himself. *Vide ante*, p. 220, n. ‡.]

X. And that copies of all bargains, sales, gifts, grants, mortgages, conveyances, or other assurances of slaves, acknowledged, proved, entered, and registered in the register's office as aforesaid, and attested by the said register, or his deputy for the time being, shall be as good evidence, and allowed to be pleaded in any court in this island, as if the original was exhibited.—Dated at Antigua, 10th April, 1746, 19 Geo. II.

Copy of conveyance attested by register, as good evidence as original.

No. 270.

By an Act of Assembly of Antigua, intituled, "*An Act for the supplying the several defects in the Laws of this Island concerning conveyances and assurances of lands, tenements, slaves, and other freeholds and inheritances, lying and being in* ANTIGUA, *and the islands thereto adjacent and belonging; and for making the probate of the execution of deeds, in parts beyond seas, relating to such lands, tenements, slaves and other freeholds and inheritances effectual, without an acknowledgment thereof before the Register of this Island, or his deputy.*"

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PREAMBLE.

WHEREAS by the general laws of the Leeward Caribbee Islands in America, or the particular laws of Antigua, provision is made only concerning deeds, conveyances, and assurances executed upon the island of Antigua, or in England or Ireland, for conveying lands, tenements, slaves and other freeholds and inheritances lying and being in Antigua, and the islands thereto adjacent and belonging; and also disputes having arisen concerning the acknowledging, proving and authenticating deeds executed beyond the seas, for and touching estates and interests in lands, tenements, and slaves in Antigua, and the islands thereto adja-

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cent and belonging. For prevention therefore of doubts, and settling the law in these points in future, we, your Majesty's most dutiful, loyal and obedient subjects, the Governor of your Majesty's Leeward Caribbee Islands in America, and the council and assembly of this your Majesty's island Antigua, do humbly pray your most excellent Majesty, that it may be enacted and ordained, and be it, and it is hereby enacted and ordained by the authority aforesaid, that all deeds, conveyances, and assurances, which shall be executed in any parts beyond the seas, of and concerning lands, tenements, slaves, rents, and other freeholds and inheritances lying and being in Antigua, or the islands adjacent and thereto belonging, shall be good and effectual to pass estates and interests, rights and titles of and in such lands, tenements, slaves, rents, and other freeholds and inheritances in Antigua, or the islands thereto adjacent and belonging, according to the purport, words, and lawful intention of the same deeds, without livery of seisin or attornment; it being hereby declared that livery of seisin or attornment were never required in any such deeds, by the constant usage, laws, and practice of Antigua, and that all and every such deeds, conveyances, and assurances, have sufficient words to pass the fee-simple of such lands, tenements, slaves, rents, and other freeholds and inheritances, and duly recorded as the laws of Antigua direct and require, shall be, to all intents and purposes, as effectual to bar, discontinue, dock, extinguish, cut off, and destroy all estates tail, rights to estates tail, remainders vested and contingent, and all reversions, rights, charges, powers, and authorities, dower and thirds, estates and rights of feme coverts, of, in, touching and concerning all and every such lands, tenements, slaves, rents, and other freeholds and inheritances, as a fine with proclamations, according to the laws of that part of Great Britain called England, duly levied in the court of Common *Pleas at Westminster, or a common recovery suffered with due execution, returned and made in the same Court of Common Pleas at Westminster, or both such fine and recovery, with deeds properly executed to lead and declare the uses of both or either such fine or recovery, are or is by law, in that part of Great Britain called England, of, for, touching and concerning lands, tenements, rents, and other freeholds and inheritances, lying and being in that part of Great Britain called England, and all rights, charges, powers, and authorities touching and concerning the same; so always that all parties so granting, conveying, or passing, shall be of the full age of one and twenty years.

ACT.

Conveyances of estates in Antigua, executed out of Autigua effective, without livery of seisin or attornment. *Vide ante*, p. 222.

Such deeds containing words which pass the fee simple, recorded as the laws of Antigua require to bar entails, &c. as effectually as fine and recovery, if party transmitting right be of age. *Vide ante*, p. 218.

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II. Provided always, that all deeds, conveyances, and assurances, bargains and agreements, of and concerning lands, tenements, slaves, rents, and other freeholds and inheritances, lying and being in Antigua, or the islands adjacent and thereto belonging, executed in any part of His Majesty's dominions in Europe or elsewhere (except Antigua,) or

Deeds executed out of Antigua, to be enrolled in Antigua in two years.

any other part of the world not belonging to or under the crown of Great Britain, shall be enrolled, registered, and recorded in the register's office of Antigua, within two years after the execution thereof.

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III. And provided also, that whenever any estates tail, rights to estates tail, remainders vested or contingent, reversions, rights, charges, powers, and authorities, dowers and thirds, estates and rights of femes covert are to be barred, discontinued, docked, extinguished, cut off, or destroyed, that the deed or deeds so passing or conveying, if executed in that part of Great Britain called England, or in Ireland, shall in all respects be executed and acknowledged by the party and parties granting and conveying, and married women be thereon privately examined, and be certified, enrolled, and registered as directed and required in and by a certain general act of the Leeward Caribbee Islands in America, made at Nevis, intituled, *An Act for supplying the want of fines and recoveries in these islands, and for making any deed or deeds duly executed and acknowledged before any of her Majesty's Justices of the Court of Common Pleas, in the kingdom of England or Ireland, or any of these Islands, equivalent to a fine and recovery, or fines and recoveries, duly and regularly levied and suffered in any of her Majesty's Courts of Record at Westminster*, dated at Nevis, the twenty-first day of June, *Anno Domini* one thousand seven hundred and five, and in the fourth year of her late Majesty's reign; and if executed in Antigua, to be also acknowledged by the party and parties granting and conveying, and married women thereon privately examined, and be certified and registered as the *particular law and acts of Antigua do require; and if executed in that part of Great Britain called Scotland, then to be acknowledged by such parties granting and conveying, and married women to be privately examined before one of the Lords of Sessions, or any Sheriff of any county or stewarty; and such acknowledgment and examination with the name of the place, and day and year of our Lord, or the king's reign, shall be certified upon the same deed and deeds, under the hand and seal of such lord of sessions, or such sheriff; and, if executed in Barbadoes, or in any of the Leeward Caribbee Islands in America, or in any other colony, territory, or dominion in Europe, Asia, Africa, or America, belonging or to belong to the crown of Great Britain, then to be acknowledged by such parties, and married women to be privately thereon examined before some judge of his Majesty's Court of Common Pleas, or of some other court of record; or, where no such Court of Common Pleas, or other such court of record is established, then before the person who shall exercise and execute the chief command there; and such acknowledgment and examination, with the name of the place, day, and year of our Lord, or the king's reign, shall be certified upon the same deed or deeds, under the hand and seal of such judge or commanding officer; and if the same shall be

Deeds barring estates tail, estates and rights of married women, &c. and executed in England or Ireland, to be acknowledged, married women to be examined, and to be certified, enrolled, and registered, conformably to act of Leeward Islands, No. 32, sect. 5, *ante*, p. 228. And see No. 475, sect. 58, *post*, 238. When executed in Antigua, acknowledgment, &c. as No. 5, 39, 106, 198, 275, require.

Executed in Scotland, acknowledgment, &c. before lord of session or sheriff, to be certified with place and date, under his hand and seal.

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In any *other* place belonging to Great Britain, acknowledgment, &c. before judge of Common Pleas or court of record; if no such judge, before the person in chief command, certified respectively under his hand and seal.

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executed in any foreign kingdom, territory, colony, or place in the world, not belonging to, or under the dominion of the crown of Great Britain, then such acknowledgment and examination, if taken in Europe, shall be taken before the chief officer of, and shall be certified under the public seal of some city or town corporate, or city or town being in nature of a corporation, having a public chief officer, and using a public seal, in any part of Europe; and if such acknowledgment and examination shall be taken in any foreign colony in Asia, Africa, or America, the same shall be taken before the person there in chief command, and be certified under his hand, and such seal as such person there in chief command shall use as his public seal.

Acknowledgment in any place in Europe, not belonging to Great Britain, to be before chief officer of a corporation, certified under a public seal:

in any foreign place in Asia, Africa, or America, before the person in chief command; certified under his hand and public seal.

IV. And touching and concerning the proof and further authenticating such deeds and conveyances, be it and it is hereby enacted by the authority aforesaid, That no such deeds, conveyances, or assurances, executed any where beyond sea, out of Antigua, shall be pleadable in law or equity, or given or permitted to be proved or read in evidence in law or equity, until the same, with the acknowledgment, examination, and certificate thereon shall be all recorded *at length* in the register's office by law appointed, or to be appointed in Antigua, for registering deeds relating to lands in Antigua; and that *where any such deed shall be produced in any such manner as aforesaid, acknowledged and certified, the same, without any further acknowledgment or proof, shall be received and recorded in the said register's office of Antigua; and after being so recorded shall need no further proof, but be admitted as evidence in law and equity; and copies attested from the said office of all such deeds shall be as good evidence as allowed and practised, with relation to copies of deeds there registered in other cases in law and equity in Antigua, and shall have priority as in other cases directed; and the very day and year of our Lord in words at length, when such deeds, respectively, first shall be brought to the said register's office to be recorded, shall be truly and immediately indorsed on such deeds, and attested under the hand of the register, or his deputy executing the said office, and shall be duly registered and entered in the said office with the respective deed; and such time when such deed shall be first brought to the register's office to be recorded, shall be deemed, esteemed and taken to be the time of the entry or register thereof. Dated at St. John's, 28th July, 1764, 4 Geo. III.

Such deeds not evidence till registered *at length* in Antigua.

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Deeds so acknowledged and certified to be received for registry without further proof; originals recorded, and copies attested by register, evidence.

Priority regulated as in other cases.

Register to indorse, in *words at length*, date of receiving deed, which is to be deemed time of registry. *Vide ante*, p. 220, n. ‡.

No. 438.

An Act of Assembly of Antigua, intituled, "*An Act for the prevention of fraud and perjury.*"

PREAMBLE.

WHEREAS great abuses have prevailed for want of some act of this island for the further prevention of many fraudulent practices which are commonly endeavoured to be upheld by perjury and the subornation of perjury; we, therefore, your Majesty's most dutiful, loyal, and obe-

dient subjects, the governor in chief of your Majesty's Leeward Caribbee Islands in America, and the council and assembly of this your Majesty's island of Antigua, humbly pray your most excellent Majesty, that it may be enacted or ordained, and be it and it is hereby enacted and ordained by the authority aforesaid, that from and after three calendar months after publication hereof, no action shall be brought whereby to charge any executor or administrator upon any special promise, to answer damages out of his own estate, or whereby to charge the defendant, upon any special promise, to answer for the debt, default, or miscarriages of another person or to charge any person, upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, slaves, tenements, or hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement, upon which such actions shall be brought, or some memorandum or note thereof, shall *be in writing, and signed by the party to be charged therewith, or some other person thereupon by him lawfully authorized.

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ACT.

No action to be brought on *special promise* of executors, &c. to pay damages out of his *own* estate; or of defendant to pay debt of *another;* or on agreement of any person in consideration of marriage, or on contract for sale of lands, &c. or on any agreement not to be performed in a year; unless promise or agreement be in writing, and signed by the party, or some authorized person.

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II. And be it further enacted by the authority aforesaid, that from and after the expiration of the said three calendar months, no contract for the sale of any goods, wares, and merchandizes for the price of twenty pounds, current gold and silver money of this island, or upwards, shall be allowed to be good; except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in *earnest* to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

No contract for sale of goods, &c. to the value of 30*l*, or upwards, good; unless buyer receive part, or give earnest, or memorandum be signed.

III. And be it further enacted by the authority aforesaid, that, from and after the expiration of the said three calendar months, all devises and bequests of any lands, slaves, or tenements shall be in writing, and signed by the devisor, or by some other person in his presence, and by his express directions, as his last will and testament, in the presence of one credible white witness, who shall attest and subscribe the same, in the presence of the said devisor: or shall be wholly written, dated, and subscribed by the proper hand of the said devisor; or else shall be utterly void and of none effect.

Devises of lands, slaves, &c. to be in writing, and signed by devisor, or by another person in devisor's presence, by his direction, and attested by one white witness, or to be wholly written by devisor.

IV. Provided always, that the wills and testaments of free negroes, mulattoes, or mustees, or other persons of colour, may be attested by any free persons of colour; any thing hereinbefore contained to the contrary notwithstanding.

Wills of free persons of colour may be attested by persons of colour.

V. And moreover no devise in writing of lands, slaves, tenements, or hereditaments, nor any clause thereof, shall at any time (after the expiration of the said three calendar months) after publication thereof, be

No devise of lands, &c. re-

revocable otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing, or obliterating the same by the testator himself, or in his presence, and by his directions and consent: but all devises and bequests of lands, slaves, tenements, and hereditaments, shall remain and continue in force until the same be burnt, cancelled, torn, or obliterated by the testator, or his directions in manner aforesaid: or unless the same be altered by some other will or codicil in writing, or other writing of the devisor, signed in the presence of one witness, who shall attest and subscribe the same in the presence of the said devisor, as his last will and testament; or unless the same be altered by some other will or codicil in the handwriting of the devisor, dated and subscribed *by him declaring the same; any former law or usage to the contrary notwithstanding.

vocable, unless testator, or some person, by his direction, burn it, &c.; or testator sign revocation or alteration in the presence of one witness; or sign alteration, written only by himself.

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VI. And be it further enacted by the authority aforesaid, that if any person shall attest the execution of any will or codicil which shall be made after the expiration of three calendar months after the publication hereof, to whom any benefical devise, legacy, estate, interest, gift, or appointment of or affecting any real or personal estate (other than and except charges on lands, slaves, tenements, or hereditaments for payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will or codicil, or any person claiming under him, be utterly null and void: and such person shall be admitted as a witness to the execution of such will or codicil, within the intent of this act, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will or codicil.

If person attest will, &c. to whom any beneficial devise, &c. be therein made, will be void as to him, &c.

VII. And be it further enacted by the authority aforesaid, that in case, by any will or codicil, any lands, slaves, tenements, or hereditaments, are or shall be charged with any debt or debts, and any creditor, whose debt is so charged, hath attested, or shall attest the execution of such will or codicil, every such creditor, notwithstanding such charges, shall be admitted as a witness to the execution of such will or codicil, within the intent of this act.

If will charge land, &c. with debts, creditor having a debt charged may witness it.

VIII. And be it further enacted by the authority aforesaid, that if any person shall attest the execution of any will or codicil, which shall be made after the expiration of three calendar months after the publication hereof to whom any legacy or bequest shall be thereby given, whether charged upon lands, slaves, tenements, or hereditaments, or not, and such person, before he shall give his testimony concerning the execution of any such will or codicil, shall have been paid, or have accepted or released, or shall have refused to accept such legacy or bequest upon tender made thereof, such person shall be admitted as a witness to the execution of such will or codicil, within the intent of this act, notwith-

Interested witness to will, having, before he gives testimony, accepted or released, or after tender refused, legacy, a competent witness.

standing such legacy or bequest: provided, that in case of such tender and refusal as aforesaid, such person shall in no wise be entitled to such legacy or bequest; but shall be for ever afterwards barred therefrom: and in case of such acceptances as aforesaid, such person shall retain to his own use the legacy or bequest which shall have been so paid, satisfied, or accepted: notwithstanding such will or codicil shall afterwards be adjudged or determined to be *void for want of due execution, or for any other cause or defect whatsoever.

Such witness having refused, after tender, to be barred legacy:

having accepted it, to retain it, though will adjudged void.

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IX. And be it further enacted by the authority aforesaid, that in case any such legatee as aforesaid, who shall attest the execution of any will or codicil, which shall be made after the expiration of three calendar months after the publication hereof, shall die in the lifetime of the testator, or before he shall have received or released the legacy or bequest so given to him as aforesaid, and before he shall have refused to receive such legacy or bequest on tender made thereof, such legatee shall be deemed a legal witness to the execution of such will or codicil, within the intent of this act, notwithstanding such legacy or bequest. Provided always, that the credit of every such witness, so attesting the execution of any such will or codicil, in any of the cases in this act before mentioned, and all circumstances relating thereto, shall be subject to the consideration and determination of the court and jury before whom any such witness shall be examined, or his testimony or attestation made use of, or of the court of equity in which the testimony or attestation of any such witness shall be made use of, in like manner to all intents and purposes, as the credit of witnesses in all other cases ought to be considered of and determined.

Interested witness dying in lifetime of testator, or before he shall have accepted or refused legacy, a legal witness; subject to the consideration of the court.

X. And be it further enacted by the authority aforesaid, that no person to whom any beneficial estate, interest, gift, or appointment, shall be given or made, which is hereby enacted to be null and void, as aforesaid, or who shall have refused to receive any legacy or bequest on tender made as aforesaid, or who shall have been examined as a witness concerning the execution of such will or codicil, shall, after he shall have been so examined, demand or take possession of, or receive any profit or benefit of or from such estate, interest, gift, or appointment so given or made to him, in or by any such will or codicil, or demand, receive, or accept any such legacy or bequest, or any satisfaction or composition for the same, in any manner, or under any pretence or colour whatsoever.

No person after refusing *legacy, &c. by act declared void*, or after being examined as a witness, to receive bequest, &c. or any composition for bequest, &c. under will.

XI. And for prevention of fraudulent practices in setting up nuncupative wills, which have been the occasion of much perjury, be it enacted by the authority aforesaid, that from and after the expiration of the said three calendar months, no nuncupative will shall be good, where the estate thereby bequeathed shall exceed the value of sixty pounds current gold and silver money of this island, that is not proved

No nuncupative will good, when bequest exceeds 60*l.* unless proved by at least one person bidden to bear witness to it by testator: nor

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unless made in last sickness, &c.

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by the oath of one witness at the least that was present at the making thereof; nor unless it be proved that the testator, at the time of pronouncing the same, did bid the person present bear witness that *such was his will, or to that effect; nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she hath been resident for the space of ten days, or more, next before the making of such will, except where such person was surprised or taken sick, being from his or her own home, and died before he or she returned to the place of his or her dwelling.

Six months after nuncupative will, no testimony good that was not committed to writing in six days after will pronounced.

XII. And be it further enacted, that after six months next after the speaking of the pretended testamentary words, no testimony shall be received to prove any nuncupative will, except the said testimony, or the substance thereof, were committed to writing within six days after the making of the said will.

No probate to be granted till fourteen days after decease of testator, that the widow or kindred may, if they think proper, enter caveat.

XIII. And be it further enacted, that no letters testamentary, or probate of any nuncupative will, shall be proved before the governor in chief, or such other person having power to take the probate of wills, till fourteen days, at the least, after the decease of the testator be fully expired; nor shall any nuncupative will be at any time received to be proved, unless process hath first issued to call in the widow or next of kindred to the deceased, to the end that they may combat the same if they please.

No *will in writing* concerning personal estate repealable by *oral will;* except proof be made by one witness at least, that in testator's life-time, same was committed to writing, read to and allowed by him.

XIV. And be it further enacted, that no will in writing, concerning any goods, or chattels, or personal estate, shall be repealed, nor shall any clause, devise, or bequest therein, be altered or changed, by any words, or will by word of mouth only, except the same be, in the life-time of the testator, committed to writing, and, after writing thereof, read to the testator, and allowed by him, and proved to be so done by one witness at the least.—Dated at Antigua, 22d September, 1786. 26 Geo. III.

No. 475.

Deeds and powers of attorney proved by deposition before officer prescribed to have been executed in Great Britain or Ireland, or any British colony, [and by No. 509, s. 5, in states of America] to be received. See No. 198, s. 5. No. 270, s. 3.

By a temporary Act of Assembly of Antigua, from time to time continued, and by virtue of an Act of Assembly dated the 6th day of February, 1818, now in force, intituled "*An Act for establishing Courts of Common Pleas, Error, King's Bench, and Grand Session; and for the better regulating and settling due Methods for the Administration of Justice,*" it is enacted by sect. 58, "that conveyances and deeds, and also letters of attorney, procurations, and other powers in writing, made in places out of this island, which shall at any time after the publication of this act be produced in any court of justice within this island, with a deposition proving the same, sworn before the Lord Mayors of London, York, or Dublin, or any other mayor or chief officer of any city or town corporate within the kingdom of Great Britain or Ireland, and

attested under the public seal of such *city or town corporate, or under the hand and public seal of any chief governor, or president of the council of any colony in his Majesty's dominions, and annexed to every such instrument of writing, shall be deemed, adjudged, and taken as sufficient evidence in law and equity, as if the witness therein named, and having subscribed the same, were personally present, and made such proof *vivâ voce:* provided such deeds, if concerning lands and tenements, or slaves, be in all respects duly acknowledged and recorded in the registrar's office of Antigua, as the laws of Antigua heretofore made direct and require.

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If relating to lands, tenements, or slaves, to be acknowledged and recorded in registrar's office.

LIX. And be it also enacted by the authority aforesaid, that proof in the common form, of wills, under the seal of the Prerogative Court of Canterbury, or under the seals of any other courts, of probate of wills in his Majesty's dominions hereinbefore mentioned, shall be allowed and taken, *prima facie,* as good proof of such wills, both in law and equity, to prove *real* and *personal* devises and bequests within this island; such wills and probates being first recorded in the secretary's office of this island; and in case of devises of such realties, to be first recorded in both the registrar's and secretary's office of this island, with the probates; saving always the right of all and every person to invalidate, disprove, or set aside, the same wills, by lawful or equitable causes, as though this act had not been made.

Probates of wills under the seal of Prerogative Court of Canterbury, or other competent courts, evidence, when recorded in Antigua; for *personal* estate, with secretary; for *real,* with secretary and registrar.

LXXXII. That from and after the date of this act, where any judgment shall be entered upon confession, *nihil dicit,* or *non sum informatus,* the counsel who confesses such judgment shall leave his warrant of attorney in the secretary's office of this island, in order to have the same recorded, at the time he confesses such judgment; or, in default thereof, or in case it shall appear from such warrant of attorney that such judgment was irregularly confessed, such judgment, and the execution, if any issued thereupon, shall be of no force, virtue, or effect whatever; any law, usage, or custom to the contrary notwithstanding. And the said secretary, or his deputy, is hereby required to give to the counsel, who shall leave such warrant of attorney with him for the purpose aforesaid, an acknowledgment in writing, signed with his hand, of the receipt of such warrant of attorney, mentioning particularly, as near as may be, the day, hour, and minute he received the same.

Warrant of attorney for confession of judgment to be left in secretary's office, at time of confession, to be recorded.

In default, or, if confession appear from warrant irregular, judgment and execution to be void.

Secretary to give counsel receipt for warrant of attorney.

LXXXIV. That no execution shall issue upon any judgment which has lain dormant for the space of one year and a day, unless a *scire facias* shall issue thereon; EXCEPT where the plaintiff has been held under injunction in Chancery, or order of the Court of Chancery, or by writ of error, and it shall appear, by affidavit in *writing, filed in the secretary's office, in case of such injunction, that the plaintiff was so held under injunction.

No execution to issue on judgment dormant a year and day, till revived by *scire facias;* except plaintiff restrained by injunction.

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Conveyances void *as to creditors*, unless made for valuable consideration.

C. And all deeds, conveyances, and assurances, in writing or otherwise, of slaves, lands, tenements, goods, and chattels whatsoever, are hereby declared to be null and void *as to creditors;* unless the party or parties to whom the same is made, make it appear by legal proof, that he is actually and *bonâ fide* a purchaser for valuable consideration, really paid or secured, without any covin; or for other valuable considerations in law, according to the laws and statutes provided and made, before the settlement of this island, in such cases.

English statute of 3 W. & M. cap. 14, *for relief of creditors against fraudulent devises*, in force in Antigua.

CI. And to prevent the defrauding of creditors, by fraudulent devises of lands, tenements, and hereditaments, be it and it is hereby enacted by the authority aforesaid, that the statute made in England, the third year of our late sovereign lord and lady King William and Queen Mary, chapter the fourteenth, intituled, *An Act for the Relief of Creditors against fraudulent Devises*, as extant in the same book [the Statutes at large], printed by the printers of the crown, shall be of force for the future in this island, as to the devise of any person or persons dying after the date of this act; and such statute book shall be equal evidence as the record or enrolment could be, in all cases whatsoever within this island.

The benefit of trusts in lands, &c. liable to judgments and executions, as such property is liable in England under 29 Car. II. cap. 3, s. 10, 11, with the difference that the *trusts* be sold as *lands* in execution, under s. 103, 104, 123, 124, 126, of this act, and be liable in case of action, as *lands* under s. 101.

CII. And for the better support of credit, be it enacted by the authority aforesaid, that from and after the date hereof, the *benefit* of *trusts* of lands, tenements, hereditaments, and slaves within this island, whether such trusts be now created or in being, or shall hereafter be created and in being, shall be liable to judgments and executions, and be assets in all respects, and the heir and other persons be chargeable therefore, in the same manner as such lands, tenements, hereditaments, and heirs, and persons are liable in England, by the statute made in the twenty-ninth year of the reign of our late sovereign lord Charles the Second, chapter the third, intituled *An Act for Prevention of Frauds and Perjuries*, as the same is extant in the statutes at large printed by the printers to the crown: with the following alterations, that is to say, THAT the whole trusts in all the lands and tenements, hereditaments, and slaves, shall be sold, and execution be thereon done, as hereinafter directed, in case of lands, tenements, hereditaments, and slaves, respectively; and that such trusts shall be liable *against any purchases thereof* in all respects, on the entry of an action, or suit in equity, as lands, tenements, hereditaments, and slaves are *before* or after hereby made liable. And all estates, *for the term of any other person's life or lives*, of lands, tenements, *hereditaments, and slaves within this island, shall be devisable, descend, and go, and be assets, in the same manner here, as such estates in lands in England are directed by the same last mentioned statute, as extant in the same printed statutes ; SAVE ONLY, that no other kind of publication or execution, or other number of witnesses,

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Estate for *another's life*, devisable, &c. as in England, under last mentioned statute, 29 Car. II. c. 3, s. 12, (stated *ante*, vol. 1, 598,) save that will is to be executed according to the

shall be required for or to a will passing the same, than is required to wills by the laws and usages of this island.

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laws of Antigua, No. 438, s. 3, &c. *ante*, 235.

CXXVII. And that conveyances of lands, tenements, hereditaments, and slaves, sold in execution, shall be made by the provost marshal, or his lawful deputy of this island, at the costs of the purchasers thereof; and shall be good for such estate, trust, equity of redemption, and interest therein, to such purchaser or purchasers, their heirs, executors, administrators, and assigns, as the party from whom they were taken by executions could have made or granted, or was entitled to, and no longer or otherwise; so always as the conveyances passing any such lands, tenements, slaves, or hereditaments, be acknowledged before the registrar of this island or his deputy for the time being, and duly recorded in the registrar's office as usual, and the laws of this island require. And the marshal and his deputy shall, and are hereby required and empowered, to put all purchasers of lands and slaves in quiet possession, if required. And the Marshal's, or his deputy's, sales or certificates only, not sealed, shall be good for other goods and chattels, to the purchasers, as far as the person or persons from whom they were taken had title.

Conveyances by marshal of *lands, tenements, and slaves*, sold in execution, to be at expense of purchaser, and to be as effectual as if by defendant, if duly recorded in registrar's office.

Marshal, if required, to give purchaser possession.

Marshal's sale or certificate not sealed sufficient for *goods and chattels*.

CXXVIII. And whereas deeds with acknowledgments to bar entails, reversions, and remainders, are become the common assurance to purchasers, mortgagees, and creditors, when executed pursuant to a certain General Act of the Leeward Caribbee Islands in America, passed in the reign of her late Majesty Queen Anne, intituled *An Act for supplying the want of Fines and Recoveries in these Islands, and for making any Deed or Deeds, duly executed and acknowledged before any of her Majesty's Justices of her Court of Common Pleas, in the Kingdom of England or Ireland, or any of these Islands, equivalent to a Fine and Recovery, or Fines and Recoveries, duly and regularly levied and suffered in any of her Majesty's Courts of Record at Westminster*, dated at Nevis, the twenty-first day of June, one thousand seven hundred and five. Be it therefore enacted by the authority aforesaid, that all deeds of sale which shall be executed by the marshal, or his deputy, by virtue of this Act, if executed and acknowledged before the registrar of deeds of this island, shall be, to all intents and purposes, as effectual to bar entails, reversions, and remainders, * of the lands, tenements, hereditaments, rent-charges, and slaves, with the appurtenances, issues, and increase, as if the tenant in tail, whose estate, right, title, or interest, is sold, had at the time of the sale in all respects duly executed and acknowledged a deed or deeds thereof, as required by the last recited general act, and had declared or limited the uses thereof, for valuable considerations, to the purchaser or purchasers thereof under the provost marshal or his deputy, or his or their heirs or assigns for ever. Dated at Antigua, 21st January, 1791, 31 Geo. III.

Conveyance by marshal executed and acknowledged before registrar, as effectual to bar entails, &c. as if executed by defendant to purchaser, in all respects conformably to act of the Leeward Islands, No. 32, *ante*, p. 227.

LAWS OF ANTIGUA RELATING TO CONVEYANCES.

No. 537.

An Act of Assembly of Antigua, intituled *An Act to extend the Provisions of an Act made in General Council and Assembly of the Leeward Caribbee Islands, and passed in the Reign of Queen Anne, intituled,* An Act for supplying the want of Fines and Recoveries in these islands; and for making any deed or deeds, duly executed and acknowledged before any of her Majesty's justices of the Court of Common Pleas in the kingdom of England or Ireland, or of any of these islands, equivalent to a fine and recovery, or fines and recoveries, duly and regularly levied and suffered in any of her Majesty's courts of record at Westminster, *by declaring the same Powers and Authorities in* ALL *of the Justices of her Majesty's Courts of King's Bench and of the Barons of Exchequer in England or Ireland, for the receiving the acknowledgment of any Deed or Deeds executed before them as are by the said recited act vested in the Justices of the said Courts of Common Pleas, in the said two kingdoms.*

PREAMBLE.

WHEREAS notwithstanding great conveniency and other advantages have very often resulted to the proprietors of lands, tenements, slaves, and other hereditaments situated in this island, by means of the act for supplying the want of fines and recoveries; yet such conveniency and advantages have been sometimes found not so easy, direct, and ample, to persons become parties to deeds necessary to be executed and acknowledged before some justice of the Court of Common Pleas pursuant to the said act, when such parties happened to reside, either in England or Ireland, in parts distant from the metropolis of each kingdom, and by means of which have been compelled to travel, at some considerable share of expense and labour, to attend one of the justices of the Court of Common Pleas, who generally reside in the metropolis of each respective kingdom to which their respective courts are affixed: and whereas such expense and labour might be often diminished hereafter, and the general intent of the said act would be rendered more effectual, if all the judges of his Majesty's three principal courts of
[*243] common law in each kingdom, were vested with the *full * and equal power* for taking the acknowledgment of deeds, in lieu of levying fines and of suffering common recoveries, as is exclusively given to the judges of the Common Pleas in the said kingdoms, by reason that two judges in each kingdom will, twice in a year at least, by travelling the circuits, be placed in situations, at known periods, at some near and more convenient distance to the habitations of all such parties, who might happen to dwell at a great distance from the metropolis as aforesaid; we, therefore, your Majesty's most dutiful, loyal, and obedient subjects, the commander-in-chief in and over all your Majesty's Leeward Caribbee Islands in America, and the Council and Assembly of this your Majesty's Island of Antigua, most humbly pray your most excellent Majesty, that it may be enacted and ordained, and be it, and

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ACT.

Deeds intended to pass estate under act of the Leeward Islands, No. 32, acknowledged before Justice of K. B. or Baron of Exchequer in England or Ireland, to be as valid, and examination of the parties as effectual, as if the transaction were before Justice of C. P. in England or Ireland.

it is hereby enacted and ordained by the authority aforesaid, that, immediately from and after the passing and publication of this act, any deed or deeds, made and entered into by husband and wife, or by tenant in tail, general or special, or by any other party or parties by whom any interest is intended to pass, by force and operation of the act, intituled, *An Act for supplying the wants of Fines and Recoveries in these islands, and for making any Deed or Deeds executed and acknowledged before any of her Majesty's Justices of England or Ireland, or any of these islands, equivalent to a Fine and Recovery duly and regularly levied and suffered in any of her Majesty's courts of record at Westminster*, dated at Nevis, the twenty-first day of June, one thousand seven hundred and five, in the fourth year of the reign of her Majesty Queen Anne; such deed or deeds may be executed and acknowledged before any one of the judges or justices of his Majesty's Courts of King's Bench, or before any one of the judges or barons of his Majesty's Court of Exchequer, either in the kingdom of England or Ireland: and that every examination or examinations, acknowledgment or acknowledgments, of the party or parties, subscribed by such judge, justice, or baron, before whom he, she, or they, did appear, shall be, to all intents and purposes whatsoever, as valid and effectual in law to pass all and every estate, right, title, and interest, and claim of the party or parties, and of each of them, to such deed or deeds, as if the same was or were executed and acknowledged before any of the justices of the Court of Common Pleas, in either of the said kingdoms, as directed by the herein recited act; any thing to the contrary thereof in any wise notwithstanding.—Dated at St. Christopher's, 4th September, 1799, 39 Geo. III.

Although the latest Act of Assembly referred to, which has been approved by the King in Council, is in 1818, yet the above extracts comprise all the laws of Antigua relating to conveyances up to September, 1822. The laws of Antigua, like all other laws, have gradually attained their present improved state according to the wants and necessities of the subject; and as each subsequent law depends, to a certain extent, on the preceding laws, the extracts occupy a much greater number of pages than was expected at the commencement of the undertaking. The colonial laws being in the possession of only a few individuals, they are stated by way of extract in preference to giving the result, as it enables the reader to peruse the very law itself. The index to the notes, in this as well as in every other instance, will give a short analysis of the subject, and state any alteration which may have taken place, either by means of new acts or decisions between the above period and the time when the index is made.

For the various Forms of ACKNOWLEDGMENTS, AFFIDAVITS, CERTIFI-

GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

*hereinafter mentioned, the said several persons parties to these presents *have*, and each and every of them *hath* made, ordained, constituted, and appointed, and by these presents *do*, and each and every of them *doth*, make, ordain, constitute, and appoint, and in their and each of their place and stead respectively put [*two attornies*], esquires, both of the said Island of Antigua, jointly and separately, to be their, and each and every of their true and lawful attornies (*u*) or attorney, for them and each [*245] *of them, and in their and each of their names and name, to appear in any court, or before any judge, registrar, [*246] *or other proper officer, of the said Island of Antigua,

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CATES, &c. requisite to the validity of the different kinds of COLONIAL CONVEYANCES executed in Great Britain and Ireland, see the INDEX TO THE PRECEDENTS.

Power of attorney to acknowledge a colonial deed may be in the body, or in dorsed, or annexed.

Proof of the execution must be made by one of the witnesses.

(*u*) The power of attorney from a person absent from the islands to acknowledge a deed, is usually inserted in the deed itself; but it may be made by an indorsement under hand and seal, or by an annexed deed. [See forms of such powers, *post*, Vol. 5, pp. 543, 562.] If it be inserted in the deed, the execution of the deed by the absent person must be proved on oath by one of the subscribing witnesses, agreeably to No. 475, sect. 58, *ante*, p. 238. But if the power of attorney be by a distinct indorsed or annexed deed, the execution of the deed and the power of attorney also must be proved in the same manner. So also when a power of attorney authorizes the execution of colonial deeds, or otherwise concerns lands, tenements, or slaves, there should be a power inserted to acknowledge the power; No. 475, sect. 58, *ante*, p. 239; and the execution of the power of attorney must be proved in the same manner as any other deed.

Affidavit and certificate of execution of colonial deeds.

Unless an affidavit by one of the subscribing witnesses, of the execution of a deed made out of any of the islands, and the attestation or certificate of the mayor, &c. be annexed to the deed, the registrar will not register it, and it will be returned in order that it may be done. In the certificate by a mayor, &c. of the affidavit of the execution of colonial deeds, it has been usual in practice ever since the following English statute, to refer to it as the authority by which the certificate is made; yet it does not appear that the letter of the act is any authority for it. If no reference were made to any statute, the certificate would be equally effectual. But as Lord Coke says, "it is a safe thing to follow approved precedents, for *nihil simul inventum est et perfectum*." Co. Litt. 230. a.—[As to the recovery of debts in the plantations, *vide post*, Vol. 5, p. 144.]

to acknowledge these presents to be the act and deed, acts and deeds of the parties to these presents, and the names or name, seals or seal, hereunto subscribed and affixed, to be their respective hands writing and seals: *And* further, to do and perform any act, matter, or thing, in such cases used and accustomed, or which shall be requisite or advisable for making or rendering these presents valid and effectual in the law, according to the true intent and meaning of the same: (*And* to indorse upon or annex to these presents a schedule or schedules containing a full and particular description of the lands hereby charged or granted and demised;) [(*x*) and the names, qualities, and other descriptions of the negroes and slaves thereupon, or belonging thereto.] IN WITNESS, &c.

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To do any other act for rendering same effectual;

and to indorse schedules of lands and negroes.

THE SCHEDULE to which the above (*or* the within written) (*or* the annexed) indenture refers.

Schedule.

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*For by the English statute 59 Geo. 3, c. 120, intituled "*An Act for Establishing a Registry of Colonial Slaves in Great Britain and for making further provision with respect to the removal of Slaves from the British Colonies,*" it is requisite that the names and descriptions of the slaves, according to the latest registration in Great Britain, should be set forth either in the body of the deed, or in a schedule, as above mentioned; a certificate of the names and descriptions of the slaves should be procured from the office established by virtue of the act, at No. 13, James Street, Buckingham Gate, London. The hours of attendance at the office are from ten to four every day, except Sundays, and such holidays as are kept at the Bank of England.

SLAVE REGISTRY ACT.

Directions as to the schedule of registered slaves.

Where there is no lease for a year, which appears, *ante*, p. 222, to be unnecessary, some gentlemen annex the registrar's certificate to the conveyance, either having it stamped with a progressive deed stamp duty, or having sufficient stamps on the skins to cover the number of words in the certificate. But the slaves are more commonly enumerated in a new schedule copied from the registrar's, for the cer-

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(*x*) These words should now be omitted, and after the word "slaves," *ante*, p. 190, in the fifth line from the bottom, say,

"particularly mentioned and described in the schedule hereunder written (*or* hereupon indorsed) (*or* hereunto annexed)."

Reference to schedule of slaves.

SLAVE REGISTRY ACT.

tificate being on paper, it is more liable to damage and decay than parchment.

Under the third section of the act, the Commissioners of his Majesty's Treasury have appointed the following:—

Fees of the colonial slave registry office.

"*Schedule of Fees to be taken by the Registrar or his Assistants in the Office for the Registry of Colonial Slaves in Great Britain.*

	£.	s.	d.
Fee on searching the registry, for each plantation, estate, or establishment, which shall be the subject of search † . .	0	3	6
Fee on each certificate of slaves, not exceeding the number of ten, on each plantation, estate, or establishment . .	0	10	0
Fee on each certificate for every slave above ten, and not exceeding the number of one hundred	0	0	6
Fee on each certificate for every slave above the number of one hundred	0	0	3

Given under our hands at the Treasury Chambers, Whitehall, the 25th day of November, 1819.

(Signed) N. Vansittart.
B. Paget.
Lowther."

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By 59 Geo. III. c. 120, after Jan. 1, 1820, no purchase to be made, or money lent in Great Britain or Ireland, on security of slaves, unless the slaves be registered.

*By sect. VIII. it is enacted, "That from and after the first day of January, one thousand eight hundred and twenty, it shall not be lawful for any of his Majesty's subjects in this United Kingdom to purchase, or to lend or advance any money, goods, or effects upon the security of any slave or slaves in any of his Majesty's colonies or foreign possessions, unless such slave or slaves shall appear by the return received therein to have been first duly registered in the said office of the registrar of colonial slaves; and that every sale, mortgage and conveyance, or assurance of, and every charge of or other security upon, any slave or slaves not so appearing to be registered, which at any time or times after the said first day of January, one thousand eight hundred and twenty, shall be made or executed within this said united kingdom, to or in trust for any of his Majesty's subjects, shall be absolutely null and void in respect of any such unregistered slave or slaves; and that for this purpose no slave or slaves shall be deemed and taken to be duly registered, unless it shall appear that a return of such slave or slaves, duly made by the owner or owners or other persons in his or their behalf, in manner and form required by law in the colony in which such slave or slaves may reside, or a copy or abstract of such return, shall

Sale, mortgage, or charge, otherwise made, to be void, &c.

What taken to be duly registering.

† It is the practice of the office not to charge for the search when a certificate is ordered.

have been received in the office of the said registrar, from the colony in which such slave or slaves shall reside, within the four years next preceding the date of such sale, mortgage, conveyance, or assurance, charge or security as aforesaid."

No deed executed for the conveyance of slaves valid, unless registered name, &c. of slave set forth.

IX. And "that from and after the said first day of January, one thousand eight hundred and twenty, no deed or instrument made or executed within this United Kingdom, whereby any slave or slaves in any of the said colonies shall be intended to be mortgaged, sold, charged, or in any manner transferred or conveyed, or any estate or interest therein created or raised, shall be good or valid in law to pass or convey, charge or affect any such slave or slaves, unless the registered name and description, or names and descriptions of such slave or slaves shall be duly set forth in such deed or instrument, or in some schedule thereupon indorsed or thereto annexed, according to the then latest registration or corrected registration of such slave or slaves in the said office of the registrar of slaves: provided always, that no deed or instrument shall be avoided or impeached by reason of a clerical error in setting forth the names and descriptions of any slave or slaves therein, or in any schedule thereto contained; nor shall the same be avoided or impeached by reason of any disagreement between the names and descriptions and the entries thereof in the books of registry, or duplicate registry, which shall have arisen from any error or *default of the registrar, his assistants or clerks, in extracting and certifying the said names and descriptions, without the fraudulent contrivance or wilful default of the parties to such deed or instrument: provided also, that nothing herein contained shall extend to or be construed to hinder or prevent the transfer or assignment of any security, mortgage, or charge of or upon slaves granted, made, created, or executed antecedently to the passing of this act, nor to avoid any deed or instrument whereby such security, mortgage, or charge, shall be hereafter transferred, nor to avoid, hinder, or impeach any will, codicil, or other testamentary paper, or any probate or letters of administration, or any bill of sale, assignment, conveyance, or instrument made by or under the authority of any commission of bankrupt, or any public officer appointed to assign or convey any insolvent's estate and effects, or by or under the authority of any court of justice, or any officer thereof, or in the execution of any legal process, by reason that the registered names and descriptions of any slaves, are not set forth in such deed, will, codicil, testamentary paper, probate, letters of administration, bill of sale, assignment, conveyance, or instrument."

Misnomers not to invalidate deed.

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Proviso for securities executed before passing of act, and certain other deeds herein mentioned.

X. And "that the issue of any slave or slaves named or described in any deed or instrument executed in the United Kingdom, or any schedule thereto, born after the return required by law, in the colony in which such slave or slaves may be resident, who shall afterwards be duly registered in the next return required by law in the said colony,

In what case issue of slaves named in any deed taken to be conveyed thereby.

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shall be deemed and considered to pass and be conveyed and affected as registered slaves by such deed or instrument, as effectually to all intents and purposes as if such issue were therein named and described, any thing in this act contained to the contrary notwithstanding."†

[It may be useful in this place to give a brief summary of some of the laws relating to conveyances of real estates, in the English colonial possessions in the West Indies and North America, especially those of Jamaica and Barbadoes (the most considerable of the British West India Islands). The reader will find the acts in question stated at length in a useful collection of colonial laws recently published. See Howard's Laws of the Colonies.

LAWS OF JAMAICA RELATING TO CONVEYANCES.

LAWS OF JAMAICA RELATING TO CONVEYANCES.

Deeds acknowledged, or proved, and recorded within three months after date.

Act 33d Car. 2, c. 12, provides, "that a deed, in due form of law made, and within three months after the date thereof acknowledged by the party or parties that grant the same, or proved by the oath of one sufficient witness or more before the governor, or some one of the judges of the courts of this island, and the same recorded at length in the office of enrolments, (which said office shall always be kept at St Jago de la Vega,) within the said three months, shall be valid to pass the same without livery of seisin, attornment, or any other act or ceremony in the law whatsoever; and that no deed hereafter made without such acknowledgment or proof and enrolment, shall be sufficient to pass away any freehold or inheritance, or to grant any lease for above three years."‡

valid without livery of seisin; but otherwise insufficient to pass estate for more than three years.

Conveyances by husband and wife or any single person to operate as a fine or recovery.

By the act 2 Ann. c. 7, it is enacted, "that all bills of sales and conveyance whatsoever, heretofore made and recorded, or such as shall be made hereafter by any persons out of this island, either by husband and wife or by any single person, who by law may make any such sale or conveyance, and acknowledged before the lord mayor of London, or any lord mayor or mayor of any other city within the kingdoms of England and Ireland, or before the governor or governors of any of her Majesty's islands or colonies for the time being, and duly recorded in this island, shall be good and valid in law against all persons whatsoever that can or may claim any manner of estate in the lands, tenements, or premises so conveyed, or to be conveyed, as fully, to all intents and

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† These clauses are expressly re-enacted in the late act (5 Geo. IV. c. 113,) for consolidating the laws relating to the Slave Trade.

‡ Amended by subsequent acts.

purposes, as any lands or tenements in England might be passed by fine and recovery, duly levied and executed in any of her Majesty's courts at Westminster.

LAWS OF JAMAICA RELATING TO CONVEYANCES.

By act 4 Geo. 2, c. 5, it is enacted, "that all deeds and conveyances made and executed out of this island, for any lands, tenements, negroes, or hereditaments within this island, from the 1st day of May, 1732, shall be duly proved or acknowledged and recorded or enrolled in the office of enrolments of this island, within six (which by act 16 Geo. 2, c. 5, is enlarged to twelve) calendar months after the dates of such deeds or conveyances, and within ninety days after the arrival of the ship which brought the same, otherwise to stand void with respect to other purchasers or mortgagees bonâ fide for valuable consideration as aforesaid; but still to preserve and maintain a right and title against the vendor or mortgagor, and his or their heirs, in case the first vendee or mortgagee shall at any time duly prove and record his or their deeds or conveyances, no second or other deed or conveyance being in the mean time proved or acknowledged and recorded or enrolled in favour of any other person or persons as aforesaid."

Deeds executed out of the island to be enrolled within twelve calendar months after date and within ninety days after the arrival of the ship.

24 Geo. 2, c. 9: "*An Act for the better regulating of the Probate of Deeds and Conveyances, and Letters of Attorney, executed off this Island.*" [31st October, 1751.]

Act 24 G. 2, c. 9.

"WHEREAS doubts have arisen concerning the probate or acknowledgment of letters of attorney before the mayor or other chief magistrate of any city, borough, or town corporate in Great Britain, by one or more witnesses subscribing, or by the party acknowledging the same, whether such letter of attorney so proved as aforesaid, is, or may be, sufficient to authorize the person or persons nominated and appointed in and by such letters of attorney to commence and prosecute any action or suit in any of the courts of law or equity in this island, in the name of the party executing such letter of attorney, or to do any other act in pursuance thereof:

Reciting that doubts had arisen concerning letters of attorney acknowledged or proved before the mayor, &c. of any city, &c. in Great Britain,

"AND WHEREAS doubts may also arise concerning the probate of deeds and conveyances made off this island, whether the probate of such deeds or conveyances, by the oath of one of the subscribing witnesses, or by the acknowledgment of the party before the mayor or other chief magistrate of any city, borough, or town corporate in Great Britain, and certified under the common seal of the same, are good and effectual in the law:

and might also arise concerning deeds and conveyances so acknowledged, &c.

"AND WHEREAS there hath not been a sufficient provision made for the probate of deeds, conveyances, or letters of attorney, in the kingdom of Ireland or in any of his Majesty's colonies in America: to remedy the aforesaid inconveniences, be it enacted, that all deeds, conveyances, and letters of attorney whatsoever, which have been or shall be hereafter executed in Great Britain, and proved by the subscribing witness or witnesses, or acknowledged by the party before the mayor or

All deeds, conveyances, and letters of attorney, executed in Great Britain,

LAWS OF JAMAICA RELATING TO CONVEYANCES.

and proved or acknowledged before the mayor or chief magistrate of any city, &c. to be good.

All deeds, &c. executed in Ireland, and proved or acknowledged before any mayor, &c. to be good.

other chief magistrate of any city, borough, or town corporate in Great Britain, and certified under the common seal of such city, borough, or town corporate, shall be as good and effectual in the law, to all intents and purposes whatsoever, as if such deeds, conveyances, or letters of attorney had been respectively proved by the witness or witnesses subscribing the same, or had been acknowledged by the party before a judge of any court of common pleas in this island, any law, custom, or usage to the contrary notwithstanding."

And be it further enacted, " that all deeds, conveyances, and letters of attorney whatsoever, which have been or shall be hereafter executed in the kingdom of Ireland, or in any of his Majesty's colonies in America,† and which have been or shall be hereafter proved by the subscribing witness or witnesses, or acknowledged by the party before any mayor or other chief magistrate of any city, borough, or town corporate, in the kingdom of Ireland, or before the governor or commander in chief of any of his Majesty's colonies in America, and certified under the common seal of such city, borough, or town corporate, in the said kingdom of Ireland, or under the seal of his Majesty's colonies, where the said deeds, conveyances, and letters of attorney, have been, or shall be, respectively executed, shall, and the same are hereby declared to be as good and effectual in the law for the purposes for which the same were, are, or shall be intended, as if such deeds, conveyances, and letters of attorney, had been respectively proved by the subscribing witness or witnesses, or acknowledged by the party before a judge of any court of common pleas in this island, any law, custom, or usage to the contrary notwithstanding.

Mortgages to aliens for money lent to be valid.

By act 13 Geo. III. c. 16, intituled, *An Act for extending the Credit of this Island, and to encourage Foreigners to lend Money to the Inhabitants thereof, under certain Regulations* (23d September, 1772), it is enacted, " that after the passing of this act it shall be lawful for all persons, being foreigners or aliens, to lend money, at lawful interest, upon the security of any freehold or leasehold estates in this island, and to hold the same as an effectual security for the money lent."

Special provision in case of forfeiture.

And, " that immediately after and on forfeiture of any such security made to such foreigner or alien, and nonpayment of the money lent or becoming due upon any such security at the time therein stipulated and agreed upon, the legal estate upon which any such mortgage shall have been granted shall from thenceforth become vested in the President of his Majesty's Council, the Speaker of the Assembly, and the Chief Justice of this island for the time being, upon such trusts and for such uses, intents, and purposes as shall be expressed in the original conveyance or securities made to the foreigner or alien for the money lent. And it shall and may be lawful to and for all and every such foreigners or

† Extended to other colonies by stat. 42 Geo. III. c. 26.

aliens, their heirs, executors, administrators, or assigns, to bring and prosecute, by themselves or their lawful attornies respectively, his, her, or their action or actions, bill or bills, in any court of law or equity in this island, in the names of the trustees before mentioned, for the recovery of the monies lent and becoming due upon such securities, by sale or otherwise, as effectually as natural born subjects may now do. And it shall be lawful for the said trustees, and they are hereby required, to allow their names to be used in bringing and prosecuting such action or actions, bill or bills, for the purposes aforesaid. Provided also, that no such foreigner or alien shall, by any means whatever, be entitled to obtain or enter into the actual possession of any such lands or estates, or to foreclose the equity of redemption thereof."†

LAWS OF JAMAICA RELATING TO CONVEYANCES.

By act of 16 Geo. III. c. 14, after the 1st day of January, 1777, no devise of any negro, mulatto, or other slave, by will, shall be good and valid in law to pass such negro, mulatto, or other slave, unless such will shall be duly executed according to the form prescribed by the said statute 29 Car. II. commonly called "The Statute of Frauds and Perjuries;" any law, custom, or usage to the contrary thereof notwithstanding.

Devises of slaves to be executed according to the Statute of Frauds.

LAWS OF BARBADOES RELATING TO CONVEYANCES.

LAWS OF BARBADOES RELATING TO CONVEYANCES.

By act 2 Car. II. it is enacted, "that a deed in due form of law made, and within three months after the date thereof acknowledged before the resident governor for the time being, or before some other of the chief judges for the time being of some one of the courts of justice within this island, by all the parties that pass or grant away a lease for above the term of three years, or any freehold or inheritance, by such deed, or by so many of them as there shall be living, or by any other person or persons lawfully authorized under hand and seal to convey or grant the same, (so that the same be recorded at length in the secretary's office of this island within the three months,) shall be valid to pass the same *without livery, attornment, or any other act or ceremony whatsoever.* And that no deed hereafter, without such acknowledgment and

As to the execution of deeds.

† Statutes 13 Geo. III. c. 14, of the Imperial Parliament, authorizes aliens to lend money at interest, not exceeding £5 per cent., on security of any estate in any of his Majesty's colonies in the West Indies, whether the foreign state of which such alien is a natural born subject be at war with this kingdom or not; and they are to have the same remedies for its recovery, except as to taking possession or foreclosing the equity of redemption, as British subjects.

LAWS OF BARBADOES RELATING TO CONVEYANCES.

enrolment, shall pass any estate of freehold or inheritance or any lease above the number of three years."

Conveyances by married women.

Item: "That if any married woman shall be minded to alien her jointure, dower, or any other her estate of freehold or inheritance within this island, or any part thereof, whether it be joint or in severalty, and do make any writing under her hand and seal to convey the same, and come before the governor or any other chief judge of some of the courts of justice within this island to acknowledge the same, then such governor or judge shall acquaint her what she is to convey by the same writing, and for what estate, and shall in private demand of her whether she be willing to the same, and whether she doth it freely and voluntarily, and not for fear or by reason of any threats or menaces; and if she then confess she doth it freely and uncompelled by fear or otherwise, then shall her acknowledgment of the said writing be received, and the day of such acknowledgment, with the governor or judge's name before whom such acknowledgment was taken, to be indorsed and subscribed, and thenceforth such writing shall become valid and firm against her and all that shall claim the lands, tenements, or hereditaments therein mentioned to be granted, for or under her or in right of her. And also, that a fine levied in England by a married woman of her jointure or title of dower, or other freehold or inheritance here in this island, being brought over and entered on record here, shall be valid as if the same were levied in England."

Fine levied in England recorded in Barbadoes to be valid.

As to conveyances of slaves,

By act 8 Car. II. slaves are declared to be real estate; but by act 12 Car. II. they may be recovered in personal actions, and continue chattels for the payment of debts.

By act 39 Geo. III. conveyances of slaves are required to be proved or acknowledged and recorded in the manner prescribed for the conveyance of lands by the act of 8 Car. II.

Deed acknowledged before mayor, &c. to be a good conveyance by married women.

By stat. 11 Car. II. s. 4, it is enacted, "that if any man and his wife, of full age, or woman sole, by their deed of sale or any other instrument sufficient to that intent, if residing in England, Scotland, or Ireland, or any other of his Majesty's dominions, shall appear before any of his Majesty's judges of any court of law, or mayor of any city or corporation, or before the chief governor of any island or place where they live and inhabit, and shall acknowledge the same, in which acknowledgment the woman do declare her voluntary and free consent, without threats or force of her husband, and the same shall be so sent over, and truly certified under the seal of the judge, mayor, corporation, or governor of this island, and recorded here at length in the secretary's office within twelve months then next after such acknowledgment, shall be as effec-

tual to convey the land therein contained as if the same had been done in this island."

By act of 2 Geo. III. intituled, *An Act for prevention of Frauds and Perjuries*, estates in lands or slaves, not granted by writing signed by parties making the same, or their agents, thereunto lawfully authorized, (except leases for three years at rack rents,) are to have force only of estates at will. No interest in land or slaves to be assigned or surrendered except by writing signed by person making same, or his agent, authorized by writing or by operation of law.

Contract, on sale of land or slaves, &c. to be in writing, and signed by party to be charged or his agent.

Devise of lands or slaves to be entirely written by testator, or to be in writing and signed by him or some other person in his presence and by his directions, and attested by two witnesses. Wills of land or slaves to be revocable only by another will or codicil, or other writing of testator, signed before two witnesses, declaring same, or by cancellation.

Declarations or creations of trusts of lands or slaves to be in writing, signed by the party, or by his will in writing; except those arising by implication of law.

Grants and assignments of trusts to be in writing, and signed by grantor or assignor. Nuncupative will of estate exceeding £30 to be void, unless proved by oath of three witnesses, and unless testator bid some person testify such as his will; and unless made at deceased's last sickness, and in his abode where he dwelt ten days before, except he were taken ill from home and died before his return.

After six months from speaking the testamentary words, no testimony thereof to be received, except same put in writing in six days after making said will. Witnesses good on trial at law, competent to prove nuncupative will.

No letters testamentary, or probate of nuncupative will, to be granted till fourteen days after testator's death, nor as to such will till widow and next of kin be cited.

No will of personal estate revocable verbally, except same were put in writing and read to and acknowledged by testator. This to be proved by two witnesses. Not to affect wills of soldiers and mariners in actual service.

Exemplification of wills, letters testamentary and of guardianship, duly authenticated and allowed by the governor, to be good proof of originals. Powers of attorney from executor or guardian residing in Great Britain, or any British colony, to be good.

English stat. 25 Geo. II. c. 6, (see this act stated 1 Jarm. Pow. Dev. 116,) to be in force in Barbadoes.

LAWS OF DOMINICA RELATING TO CONVEYANCES.

DOMINICA.

By act of 10 Geo. III. all deeds are to be recorded in the Registrar's Office of the island, if executed in Europe within twelve months, (unless lost,) such execution to be in the presence of and acknowledged before the chief magistrate of any city or town corporate in Great Britain or Ireland, and certified under the common seal or in the presence of two witnesses, to be proved by the oath of one of them before the chief magistrate as aforesaid; certificate to be indorsed on the deed, and if any *feme coverte* be a party, to be privately examined, and such examination indorsed; which said deed being recorded, to have the force of a fine or recovery. Deeds to be in the English language.

All deeds made in the island for the future, and recorded, to operate without livery and seisin.

By act 12 Geo. III. deeds recorded, though after the time limited by a former act, to be valid against prior unregistered deeds.

By act 58 Geo. III. letters of attorney executed in Great Britain or Ireland, may be proved by the witness or witnesses thereto before the chief magistrate of any city, &c. and making and signing an affidavit of the execution thereof; which being certified and transmitted to the island under the common seal and the affidavit so subscribed by the witness or witnesses, and the certificate, annexed to the said letter of attorney, being to be valid proof thereof.

By act of 3 Geo. IV. any person being tenant in tail and entitled by the laws of England to suffer a valid recovery, or if absent from the island, his or her attorney on record duly authorized, may appear before the Court of Common Pleas in the island in term time, and producing the deed or will creating the entail, and also the deed to be enrolled, acknowledge before the Court the execution thereof; which shall be recorded, and the Court shall order that unless cause shown before the last day of term, the deeds so acknowledged shall be enrolled for the purpose of barring all estates tail, &c.; deeds so enrolled, and being duly recorded, to pass estate in fee simple.

LAWS OF TRINIDAD RELATING TO CONVEYANCES.

TRINIDAD.

By a proclamation by the governor, dated 5th February, 1814, all instruments made out of the island to be taken to the office of the secretary or registrar, before whom the parties, or their attorney or attornies, shall acknowledge the same; such acknowledgment to be certified by the secre-

tary, or his deputy; registrar, if required, to make a copy of the deed, and return the original to the parties.

LAWS OF TRINIDAD RELATING TO CONVEYANCES.

By order of the king in council, dated 6th April, 1818, all deeds executed in Great Britain to be executed in the presence of two witnesses, and proved by the oath of one of the witnesses before a judge or magistrate, and to contain a power "to one or more persons in Trinidad, jointly, or severally, to appear before the secretary and registrar of the illustrious Cabildo, or his lawful deputy, in the said island, and in the name of the party or parties thereto, to acknowledge and declare the said deed, act, or instrument, to be the act and deed of the person or persons, party or parties to the said deed, act, or instrument." Power of attorney to be recorded as required by Proclamation of the 5th of February, 1814.

GRENADA.

LAWS OF GRENADA RELATING TO CONVEYANCES.

By act of 7 Geo. III. deeds affecting lands in Grenada and the Grenadines, executed in Europe, are to be recorded in the registrar's office of Grenada, within twelve months, unless lost at sea, or intercepted; and if executed in Great Britain or Ireland, to be acknowledged or proved by the oath of one of the subscribing witnesses before the chief magistrate of any city or town corporate: Certificate to be indorsed on the deed. If any *feme coverte* be a party, to be privately examined, such examination to be indorsed on the deed, and attested by the chief magistrate; which deed to have the same force as a fine or recovery.

No will to be admitted as evidence unless recorded; copies of recorded wills, and deeds attested by registrar, to be good evidence.

By another act, 7 Geo. III. slaves, cattle, horses employed upon plantations, coppers, &c. are declared real estate, and the widow to be dowable in the same manner as in the case of lands of which her husband died seised; and by act 10 Geo. III. this is extended to slaves not employed upon plantations; slaves and cattle to be chattels for the payment of debts.

By another act, 10 Geo. III. deeds which had been executed but not recorded in due time are to be void only against subsequent purchasers and mortgagees.

By act 24 Geo. III. deeds executed by a husband and wife, or by tenant in tail, acknowledged before some of his Majesty's Justices of the Court of Common Pleas in England or Ireland, shall be as effectual and valid as if such parties had levied a fine and suffered a common recovery; *femes covertes* to be privately examined by the judge; such examination

LAWS OF GRENADA RELATING TO CONVEYANCES.

to be indorsed, together with the acknowledgment of the party from whom the interest passes, and subscribed by the judge; such deeds to be recorded as required by the existing laws; but the acknowledgment subscribed by the judge to be sufficient proof of execution.

ST. VINCENT.

LAWS OF ST. VINCENT RELATING TO CONVEYANCES.

By act of 10 Geo. III. all conveyances of lands executed out of the island, (except in certain contiguous islands,) are to be acknowledged before the registrar within twelve months, or to be valid against purchasers only from the time of acknowledgment, or a duplicate within two years, if the original be either lost or destroyed; and where the parties executing any deed do not personally appear before the registrar, or his deputy, he, she or they do appoint one or more attorney or attornies expressly for that purpose, under hand and seal, either in the body of, or indorsed upon, or annexed to, the deed; and the execution of the deed, and the power of attorney, to be proved on oath by one of the subscribing witnesses before the chief magistrate of some city or town corporate in Great Britain or Ireland, and certified under the seal of such corporation. The time of acknowledgment to be deemed to be the time of registry.

All instruments thereafter made and recorded in the registrar's office to be equal to a livery and seisin.

By act of 26 Geo. III. all conveyances, deeds, and powers of attorney, made out of the Island of St. Vincent, and the Islands of Bequia, and such other of the Grenadines as lie to the northward of Cariacou, or accounts of debts, &c. which shall be produced in any court of justice within these islands, with the deposition proving the same, before any mayor or chief officer of any city or town corporate, and attested under the public seal, shall be evidence, the deeds being duly recorded.

THE BAHAMA ISLANDS.

LAWS OF THE BAHAMA ISLANDS RELATING TO CONVEYANCES.

By statute 4 Geo. III. c. 1, deeds affecting real or personal estate may at the election of the party be enrolled at the secretary's office in the town of Nassau, or to be void against subsequent purchasers, duly enrolling, &c.

By statute 4 Geo. III. c. 16, all conveyances, powers of attorney, or other deeds, executed in Great Britain or Ireland, and acknowledged before any chief magistrate of any city, &c. and certified and transmitted under the common seal, may be recorded by the secretary; deeds first registered to have priority.

LAWS OF THE BAHAMA ISLANDS RELATING TO CONVEYANCES.

By statute 51 Geo. III. c. 15, deeds executed by husband and wife, acknowledged before a judge of the King's Bench or the Common Pleas in England or Ireland, to have the same force as a fine or common recovery; provided that the wife be privately examined, and the acknowledgment of the execution by the party or parties executing the same, and the examination by the wife, be indorsed and subscribed by the judge.

THE BERMUDA ISLANDS.

LAWS OF THE BERMUDA ISLANDS RELATING TO CONVEYANCES.

By acts 19 and 43 Geo. III. deeds executed by married women and their husbands for any lands in these islands are to be as effectual as if such women had not been under coverture; provided such woman confess that she executed the same without compulsion of her husband before a commissioner to be appointed by the chief justice of the Court of King's Bench, Common Pleas, and Assize, and such confession under the hand and seal of the commissioner be endorsed and the deed be recorded within six calendar months after execution.

By act 26 Geo. III. persons holding mortgages are to give into the secretary's office the names of the mortgagor and mortgagee, the date, particular property, and sum secured, and on neglect to be postponed to subsequent mortgagee complying with the act.

TOBAGO.

LAWS OF TOBAGO RELATING TO CONVEYANCES.

By statute 8 Geo. III. all deeds to be recorded in the registrar's office, if executed in Europe, within fifteen months after execution (unless lost at sea); and if executed in Great Britain or Ireland, to be executed in the presence of two witnesses, and acknowledged before the chief magistrate of any city, &c. and transmitted under the seal of the corporation, or proved by one of the witnesses before such magistrate; if any feme covert be a party, to be privately examined, and such examination endorsed and attested by the magistrate, and the same deed being recorded, shall have the force of a fine or recovery.

By acts 2 Geo. IV. and 8 Geo. III. horned cattle, horses, and asses attached to plantations, and also slaves, mules, boilers, stills, and still-heads, and other plantation utensils, are declared to be real estate.

By act 13 Geo. III. no deeds to be void for want of being recorded within the time specified by the former act, otherwise than against purchasers and creditors who shall have recorded their securities and without notice.

LAWS OF TOBAGO RELATING TO CONVEYANCES.

By act 2 Geo. IV. horned cattle, horses and asses employed upon plantations, descend to the heirs at law and are subject to dower.

Act 3 Geo. IV. declares all stores from Europe, supplies furnished in the colonies, and salaries, shall be a preferable lien to any other incumbrance, if sued for as therein mentioned.

MONTSERRAT.

LAWS OF MONTSERRAT RELATING TO CONVEYANCES.

By act of 28 Geo. II. a memorial of deeds and conveyances and wills is required to be registered, or is declared to be void against subsequent purchasers or mortgagees; memorial to be in writing, and in case of deeds to be under the hand and seal of some or one of the grantors or grantees, his, her, or their executors or administrators, guardians, or trustees, attested by two witnesses, one whereof to be one of the witnesses to the execution, which witness shall, upon his oath, prove the signing and sealing of such memorial; and in case of wills, devising lands, under the hand and seal of some or one of the devisees, his or their heirs, executors, or administrators; and as to wills bequeathing slaves, under the hand and seal of some or one of the executors, or some or one of the legatees, his or their executors or administrators, attested by two credible witnesses, one whereof shall prove the signing and sealing of such memorial. Memorial to contain the date, names, and description of the parties, testator and witnesses, the description of the lands and slaves contained in the deed or will, and as to mortgages, the consideration. The original to be produced with the memorial to the registrar. Memorials executed off the island may be so proved by affidavit, sworn by the witness before a Judge or a master in Chancery, ordinary or extraordinary, in England or Ireland, or a chief magistrate of a city or town in the United Kingdom, and certified under the seal of such place, or the official seal of such chief magistrate. Where a conveyance or security is made by more than one writing, the lands and slaves need be named in memorial of only one such writing, and a reference thereto in the other will be sufficient. Memorials of wills may be registered if testator die in the island within six months; if in any of the Leeward Islands, within twelve months; or if elsewhere, within three years after his death.

If impediment exist to registering such will within such times, and a memorial of the impediment be registered within such times, and a memorial of the will be registered within six months after removal of such impediment, such registry sufficient.

If will concealed or suppressed, no purchaser or creditor prejudiced except will registered within three years after testator's death.

If memorial of recognizance registered in registrar's office in twelve calendar months after acknowledgment, cognizor's lands to be bound.

ST. CHRISTOPHER'S.

LAWS OF ST. KITT'S RELATING TO CONVEYANCES.

By statute 2 Geo. II. all assurances and wills concerning lands or slaves are required to be registered at Basterre, if executed beyond the seas, within two years after the execution, or the death of testator, or to be void against purchasers or mortgagees, except as to mortgages, which are to be registered within one year; deeds executed beyond the seas to be acknowledged by the parties executing, before one of the justices of the King's Bench and Common Pleas of the island, or before the chief magistrate or officer of the land, island, or place where executed.

NEVIS.

LAWS OF NEVIS RELATING TO CONVEYANCES.

By act 2 Geo. III. all conveyances and wills affecting lands and slaves used upon plantations to be registered in the secretary's office, having been acknowledged or proved by the oath of one of the subscribing witnesses before one of the justices of the Court of King's Bench and Common Pleas of the island, or one of the barons of the Court of Exchequer in Great Britain or Ireland, or before the chief magistrate of the place where executed.

Wills to be registered within two years after the death of devisor dying beyond the seas; unregistered deeds, &c. to be void against purchasers.

By act of 9 Geo. III. mortgages of slaves, if executed in parts beyond the seas, to be enrolled within twelve months, having been acknowledged by executing parties, or the execution proved by one of the subscribing witnesses, before the chief magistrate of the city, &c. in or next to which such mortgage shall be executed.

UPPER CANADA.

LAWS OF UPPER CANADA RELATING TO CONVEYANCES.

By an act of the provincial parliament of the 32 Geo. III. cap. 1, deeds and wills are required to be memorialized.

By act of 58 Geo. III. memorials executed in Great Britain or Ireland may be registered in case an affidavit sworn before the chief magistrate of any city, borough, or town corporate, be brought to the registrar, wherein one of the witnesses to the execution of the deed shall have sworn to the execution thereof and of the memorial; to be certified under the seal of such city, &c. And in case of wills, one of the witnesses to the memorial shall prove the execution of the memorial. Registrar to give the party making such deed, &c. a certificate of registry.

LAWS OF UPPER CANADA RELATING TO CONVEYANCES.

By act 59 Geo. III. *femes covertes* may, by deed jointly with their husbands, alien real estate, she appearing before the mayor or chief magistrate of any city, &c. and being examined; a certificate whereof under the seal of such city, &c. to be endorsed and signed by the chief magistrate; such examination and certificate to be made within twelve months from the date.

PRINCE EDWARD'S ISLAND.

LAWS RELATING TO CONVEYANCES IN PRINCE EDWARD'S ISLAND.

By act of 20 Geo. III. conveyances or mortgages of lands executed in Great Britain or Ireland, or duly attested copies thereof, are to be recorded at full length in the registrar's office within two years from the date, or to be void, except against the grantor or grantees.

An act of 25 Geo. III. cap. 1. requires all deeds concerning lands in the island, except leases not exceeding twenty years, or a memorial thereof, to be registered within the time specified by the act of the 20th Geo. III.

The same act requires that the execution shall have been acknowledged by the grantor himself, or proved by the oath of one of the subscribing witnesses before one of his Majesty's justices of the peace, at the place where the same was executed and duly attested by such justice; such attestation being also authenticated under the public seal of some corporation, or by the attestation and certificate of some notary public certifying that such person so subscribing as a justice of the peace is really and truly so, and that faith and credit is and ought to be given to all such attestations.

Commissioners in bankruptcy to convey bankrupt's colonial property.

By the late English Bankrupt Act (6 Geo. IV. c. 16. s. 64.) it is enacted, that the commissioners shall, by deed indented and enrolled in any of his Majesty's Courts of Record, convey to the assignees, for the benefit of the creditors, all lands, tenements, and hereditaments, (except copy or customaryhold,) in England, Scotland, Ireland, or in any of the dominions, *plantations*, or *colonies* belonging to his Majesty, to which any bankrupt is entitled, and all interest to which such bankrupt is entitled in any of such lands, tenements, or hereditaments; and of which he might, according to the laws of the several countries, dominions, *plantations, or colonies*, have disposed, and all such lands, tenements, and hereditaments as he shall purchase, or shall descend, be devised, revert to, or come to such bankrupt before he shall have obtained his certificate; and all deeds, papers, and writings respecting the same, and every such deed, shall be valid against the bankrupt and against all persons claiming under him: *Provided that where, according to the laws of any such plantation or colony, such deed would require registration, enrolment, or*

But deed to be registered ac-

recording, the same shall be so registered, enrolled, or recorded, according to the laws of such plantation or colony. And no such deed shall invalidate the title of any purchaser for valuable consideration prior to such registration, enrolment, or recording, without notice that the commission has issued.

LAWS RELATING TO CONVEYANCES IN PRINCE EDWARD'S ISLAND.

cording to the laws of the colony.

GRANT AND DEMISE OF BENEFICE.

[*250]

*GRANT *of an* ANNUITY *by a Clergyman, either to the Grantee, or to Trustees for an Insurance Company, for Ninety-nine Years, if the Grantor should so long live, charged on a Benefice with Cure (a);* DEMISE *of the Benefice to a Trustee, if the Grantor should so long live; and* POWER OF ATTORNEY *to receive and recover the Rents of the Benefice and Glebe Lands, and the Tithes and other Ecclesiastical Dues:* UPON TRUSTS, *for securing the Annuity out of the Rents and Profits, or by Mortgage or Sale, &c.* COVENANT *for payment, either with or without Sureties:* COVENANT *not to vacate the Benefice without the Grantee's consent, and that future Preferment shall be charged with the annuity:* POWER TO SEQUESTER *Benefice and future Church Preferment, &c.*

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—; BETWEEN [*grantor*] of Parties,

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(a) Doubts having been entertained, in consequence of the revival of part of the 13th Eliz. c. 20, and on principles of public policy, whether a clergyman can charge or demise his living by way of mortgage, &c. so as to bind himself; and whether a sequestration can issue on a judgment, under a preconcerted arrangement that the living shall be sequestered, it seems requisite to endeavour to ascertain whether those doubts are well founded.

Examination of the question, whether a charge or mortgage on a benefice be an ineligible security, in consequence of the stat. 13 Eliz. c. 20, *or as being contrary to the principles of public policy.*

The first section of the temporary act, 13th Eliz. c. 20, intituled, "An Act touching the leases of benefices, and other ecclesiastical livings with

GRANT AND DEMISE OF BENEFICE.

*&c. clerk, of the first part; (*b*) [*grantee*] of, &c. of the second part; and [*trustee*] of, &c. of the third part,

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cure," is in the following words:—"That the livings appointed for ecclesiastical ministers may not, by corrupt and indirect dealings, be transferred to other uses, be it enacted, by the authority of this present parliament, that no lease, after the fifteenth day of May next following the beginning of this parliament, to be made of any benefice or ecclesiastical promotion with cure, or any part thereof, and not being impropriated shall endure any longer than while the lessor shall be ordinarily resident and serving the cure of such benefice, without absence above fourscore days in any one year; but that every such lease [so soon as it or any part thereof shall come to any possession or use above forbidden, or] immediately upon such absence, shall cease and be void; and the incumbent so offending shall, for the same, lose one year's profit of his said benefice, to be distributed by the ordinary among the poor of the parish: And that all chargings of such benefices with cure hereafter with any pension, or with any profit out of the same to be yielded or taken, hereafter to be made, other than rents to be reserved upon leases hereafter to be made according to the meaning of this act, shall be utterly void." By the 14th Eliz. c. 11, s. 14, that part of the above clause in crotchets was repealed. And by the same act, s. 15, reciting, that "sundry evil disposed persons have defrauded the true meaning of the said statute, 13 Eliz. c. 20, by bonds and covenants, of suffering other persons to enjoy ecclesiastical livings, and the fruits thereof, for that such bonds and covenants are not in law taken to be leases, although, indeed, they amount to as much," it was "therefore enacted, that all bonds, contracts, promises, and covenants hereafter to be made for suffering or permitting any person to enjoy any benefice or ecclesiastical promotion with cure, or to take profits or fruits thereof, shall be to all intents and purposes adjudged of such force and validity, and not otherwise, as leases by the same persons made of such benefices and ecclesiastical promotions with cure." (*i. e.* to be void on the parson's non-residence.) And by the 43d Eliz. c. 9, s. 8, "all judgments hereafter to be had for the intent to have or enjoy any lease contrary to the said statutes, shall be deemed void, in such sort as bonds and covenants are appointed to be void which are made for that

Leases of benefices with cure, to be void on the parson's non-residence.

No benefice with cure shall be charged with a pension.

Bonds, covenants, and judgments for permitting any person to enjoy a benefice with cure, to be void on the parson's non-residence.

PURCHASE FOR A COMPANY.

(*b*) If the annuity be purchased by a public company, make the trustees for the company parties, thus:

"[*trustees*] of, &c. trustees for the society or partnership called the (Globe) Insurance Company, of the second part; and [*trustee*] of, &c." *ut supra.*

WHEREAS the said [*grantor*] is rector (*or* vicar, *or* perpetual curate) of the parish church of ——, in the

GRANT AND DEMISE OF BENEFICE.

Recital of being rector, &c.

purpose." The 13th Eliz. c. 20, was continued by the 14th Eliz. c. 11, s. 11 and 20, and the 43d Eliz. c. 9, s. 8 and 27; and by the 3 Car. I. c. 4, s. 2 and 4, it was, with all explanations, additions, and alterations thereof, made perpetual.

By the 43d Geo. III. c. 84, s. 10, the 13th Eliz. c. 20, with all explanations, additions, and alterations thereof made by the 14th, 18th, and 43d Eliz. and also so much of the 3 Car. I. whereby the same were made perpetual, were repealed. But (as before stated, Vol. 1, p. 67,) by the 57th Geo. III. c. 99, s. 1, at the end, the 43d Geo. III. c. 84, was wholly repealed; and so much of the 13th Eliz. c. 20, 14th Eliz. c. 11, 43d Eliz. c. 9, 3 Car. 1, c. 4, and several other acts therein mentioned, as related to spiritual persons holding of farms, and to leases of benefices and livings, and to buying and selling, and to residence of spiritual persons on their benefices, was also thereby repealed. The 57th Geo. III. c. 99, s. 1, by repealing the 43d Geo. III. c. 84, revived so much of the 13th Eliz. c. 20, as was not repealed by the 57th Geo. III. c. 99, s. 1. For when a repealing act is repealed, the first act repealed is revived: *Spencer's case*, cited 12 Co. 7. 2 Inst. 686. 4 Inst. 325. Readings upon the statutes, *Parl.* 1 Bla. Com. 90, and all acts explaining and amending the act so revived, are revived also. *Williams* v. *Roughedge*, 2 Burr. 747. Therefore, if that part of the statute, 13th Eliz. c. 20, relating to charging of benefices, be a distinct clause, it was revived, and has been in force since the 10th July, 1817, the date of the 57th Geo. III. c. 99. However, chargings made on ecclesiastical benefices, between the 7th July, 1803, the date of the 43d Geo. III. c. 84, and the 10th July, 1817, are free from any objection, on account of the 13th Eliz. c. 20. For, where one statute is repealed by another, the acts done in the meantime are valid. Jenk. Cent. 233. pl. 6, 2d edit.

43 Geo. III. c. 84, repealed all the above acts, and was itself with part of 13 Eliz. c. 20, repealed by 57 Geo. III. c. 99.

By repealing a repealing statute, the statute first repealed is revived.

That part of 13 Eliz. c. 20, relating to chargings, revived.

Chargings made during the repeal unobjectionable on account of the 13 Eliz. c. 20.

The purpose for which the 13th Eliz. c. 20, was made, is thus stated by Burn:—This statute was intended to prevent corrupt bargains between patron and clerk; it being at that time a practice for patrons to get some unworthy clergyman to take institution to their vacant benefices, upon condition of having leases of those benefices made to themselves at very low rates; by which means these patrons secured the main of the benefices to themselves, and got them served at any rate by stipendiary curates, while the incumbents were non-resident, and making their fortunes elsewhere: so that the statute was not primarily designed against non-residence, but against such non-residents as, by corrupt bargains and leases, made themselves tools to dishonourable patrons; and he only offends

The intention of the first part of the 13th Eliz. was to prevent corrupt bargains between patron and clerk.

GRANT AND DEMISE OF BENEFICE.

county of ——, within the diocese of ——, and hath been regularly and duly instituted and inducted thereto.

against this statute, who is non-resident, and yet at the same time leaseth out his benefice. Johns. 131. 2 Burn's Eccles. Law, 394, 6th edit.

As a lease for years, or a grant of a rent-charge by a parson, either to commence in his lifetime, or after his death, and confirmed by the patron and ordinary, bound the successor, before the 13th Eliz. c. 20; the latter part of the act was intended for the successor's benefit.

The latter part of the act relating to chargings appears to have been intended for the benefit of the successor; for, as the 13th Eliz. c. 10, did not extend to charges, before the act 13th Eliz. c. 20, a parson, with the confirmation of the patron and ordinary, might have granted a rent-charge to bind his successor. 4 Bac. Abr. 39. Gwill. ed. *Leases*, (E) 1. Watson's Clergyman's Law, 424. 4th edit. ch. 41. Thus, in the 5 Edward VI. Dyer, 69 a. pl. 30, is the following case:—"a parson makes a lease of his glebe for a term of years, the term to commence after his death; or makes a grant of a rent-charge, in like manner, and the patron and ordinary confirm it; it was moved in the Bench, whether the successor should be bound by this charge? And it was thought, that he should be bound, because it is a grant and charge immediately, although it did not take effect in the life of the grantor: but Montague doubted of the case. In the 44 Eliz. B. R. this case was urged, and affirmed to be good law, by Gawdy, Justice, and the other judges in a manner affirmed it." That was the evil to be remedied, and it is now effectually prevented by the statute.

Leases made by archbishops and bishops, contrary to their disabling statute, bind the lessor for his time.

As it has been contended, that the words of the act declaring all chargings to be void, disables the incumbent in possession from charging for his own time, so as to bind himself, it will be requisite to see how these words have been construed in other similar cases. Thus the 1 Eliz. c. 19, s. 5, declares, "that all leases, grants, &c. made by any archbishop or bishop, of any hereditaments, being parcel of the possessions of his archbishopric or bishopric, other than for the term of twenty-one years, or three lives, whereupon the accustomed yearly rent or more shall be reserved and payable during the said term of twenty-one years, or three lives, shall be *utterly void*, and of no effect, to all intents, constructions, and purposes; any law, custom, or usage to the contrary in any wise notwithstanding;" yet, in the construction of that statute, it has been held, that grants or leases, &c. not warranted by it, are not *not void*, but are good against the lessor during his time; for it is said, the intent of the act was to provide for the successor, and not for the party himself. *Sale*, and *The Bishop of Coventry and Litchfield*, cited 3 Co. 59, b. 10 Co. 60, b. Co. Litt. 45, a. 4 Bac. Abr. 117, Gwill. ed. *Leases* (H) 1. Watson's Clergyman's Law, 486, 4th ed. chap. 45. Degge's Parson's Counsellor, 110, 6th ed. There is just as much reason for saying that the 13th Eliz. c. 20, was made for the benefit of the successor, and that charges shall bind the person

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AND WHEREAS the said [*grantor*] hath contracted and agreed with the said (*c*) [*grantee*], to grant to him, his

Recital of contract for annuity.

charging for his time, because in neither of these statutes is the successor in any manner alluded to. That appears to have been the opinion formerly entertained; for Sheppard, after citing the 13th Eliz. c. 20, says "Bishops, deans, parsons, and such like spiritual persons, cannot grant the next advowsons of churches, neither can they grant rents out of their spiritual livings, but the same *charges* will be void *after their death*. And if a bishop suffer an annuity to be recovered against him by a pretence of title or prescription, on a judgment after a verdict or confession; or a parson in such a case pray in aid of the patron, and so suffer an annuity to be recovered; this will not bind the successor." Shep. Touchs. 282. *Bishop of Salisbury's case*, 10 Co. 60, b. *Eutrie's case*, cited 5 Co. 14, b. And it was resolved by the court, in *Magdalen College case*, 11 Co. 77, a. "that a bishop without the dean and chapter, a parson or a vicar without the patron or ordinary, a prebendary without the bishop, dean, and chapter, &c. and such like, have power to dispose of their possessions during their incumbency, but not to prejudice their successors." See also Co. Litt. 342, a. The 13 Eliz. c. 10, s. 3 expressly made for the benefit of the successor, has a clause similar to the 1 Eliz. c. 19, s. 5, in relation to leases, grants, &c. by parsons, &c. and the same principle of construction has been adopted as to them also; their leases and grants, not warranted by the statutes, being held to be good as against themselves during their time, but void as against their successors. *Carter* v. *Claycole*, 1 Leon. 306; 2 Burn's Ecclesiastical Law, 383, 6th ed.; Shep. Touch. 283; 4 Bac. Abr. 118, 119, Gwill. ed. *Leases* (H) 1; Watson, 487, 6th edit. ch. 45; 2 Bla. Com. 321.

Formerly held that grants and charges of rents out of benefices by parsons, &c. were valid during their incumbency.

Leases made by parsons contrary to their disabling statute bind the grantor,

The 21 Hen. VIII. c. 13, s. 3, enacts, that all leases hereafter to be made unto any spiritual person or persons of any manors, lands, &c. whereof they or any of them shall take any profit, shall be *utterly void* and of none effect, as well against the lessor or lessors, grantor or grantors, their heirs and assigns, and against every of them, as against the lessee or lessees, and their executors and assigns, and every of them; yet it has been adjudged and ruled, that such a lease is not

Although the 21 Hen. VIII. c. 13, s. 3, declares leases of farms to clergymen to be void, yet the judges have held the leases not to be void.

(*c*) If by a public company, say,

PURCHASE FOR A COMPANY.

"[*trustees*] for and on behalf of the said society or partnership, to grant to them, their executors, &c." *ut supra*

And in every other instance putting the trustees in the place of the grantee.

GRANT AND DEMISE OF BENEFICE.

executors, administrators, and assigns, a clear annuity, or yearly sum of —— pounds, for and during the term of

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void. *Woodley* v. *James*, Dyer, 358, a. pl. 47; *Hitchcock* and *Thurland's case*, 3 Leon. 122. So the same statute, s. 5, enacts, that no spiritual person shall bargain and buy, to sell again for profit, any cattle or merchandize, upon pain of forfeiting treble the value; and that every such bargain and contract shall be *utterly void* and of none effect. Lord Hardwick, when this statute was pressed on the court to prevent a commission of bankrupt being supported against a clergyman, said, "If it could be shewn that the petitioner had committed a plain act of bankruptcy, and had traded, he would not supersede the commission because a man has the hardiness in a court of justice to say, I have been guilty of a breach of one law, and therefore release me from the breach of another. The statute 21 Hen VIII. is rather in the nature of a prohibition, and a prohibition will not exempt him from being a bankrupt; for if a man, with his eyes open, will break the law, that does not make void the contract. It is undoubtedly very improper for a person to say, I have broke the law, and therefore I am exempt from any remedy a creditor may have against me; and the petitioner cannot take advantage of the breach of one law, in order to avoid his being subject to another. I am inclined to be of opinion, on this part of the act, that the contract shall be void as to the parson himself only; for it would be a most extraordinary construction of the statute that the bargain shall be void for his own benefit; and it would be very mischievous to construe the act in such a manner." *Ex parte Maymot*, 1 Atk. 198.

The 21 Hen. VIII. c. 13, s. 5, declares all mercantile dealings by a clergyman to be void;

but the statute will not exempt a clergyman from being a bankrupt, for he cannot take advantage of the breach of one law to avoid being subject to another.

A bargain or contract made by a parson contrary to the stat. 21 Hen. VIII. is void as to himself only.

In leases it is a common provision, that on nonpayment of the rent, &c. the lease shall be thenceforth *void* to all intents and purposes; yet the lessee cannot take advantage of his own neglect in paying the rent, &c.; for if it were permitted, it would be in his power to make the lease void at any rent day he thought fit, and so to add the wrong of making the lease void to that of nonpayment of the rent. 4 Bac. Abr. 124, Gwill. ed. *Leases* (H) 3. Nor can the surety of the lessee discharge himself from his liability, by taking advantage of the lessee's neglect; 2 Pres. Conv. 2d ed. note at the end of Preface: for a surety is required for the sole purpose of making him liable, in case the lessee should make default. The lease not being void without a lawful demand of the rent by the lessor, and nonpayment of it by the lessee, it cannot be avoided at the election of the wrongdoer, nor of any other person, besides the lessor. *Hanson* v. *Norcliffe*, Hob. 331; *Amphurst* v. *Palmer*, ibid. Lilley's Conv. 33*, 3d ed. [*Rede* v. *Farr*, 6 M. & S. 121; *Doe* d.

Although it be declared that a lease should be void on nonpayment of rent, &c. neither the lessee nor his surety can take advantage of the default.

*ninety-nine years, if the said [*grantor*] should so long live, to be secured in manner hereinafter mentioned, at or

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Bryan v. *Bancks*, 4 B. & A. 401; *Davis* v. *Bryan*, 6 B. & C. 656; *et vide post*, Vol. 4, p. 360.]

Supposing grant of a rent-charge by a clergyman void, yet, if he covenant to pay, and give a warrant of attorney, the court will not order the deeds to be delivered up.

There is a case in which such grant of an annuity has been questioned on the ground of the statute 13 Eliz. c. 20; however, on that point the court gave no positive opinion, but held the covenant for payment, and the warrant of attorney, to be valid. Thus, in 1799, in *Mouys* v. *Leake and another*, 8 Durnf. and East, 411, a rule was obtained, calling on the plaintiff to show cause why the defendant should not be discharged out of execution, and why a deed made for securing an annuity, and charging the payment thereof upon benefices with cure of souls, and demising the benefices to a trustee, upon the usual trusts, with covenants by the defendant and his surety to pay the annuity, and the warrant of attorney, and the judgment entered thereon, should not be vacated, and why the *fieri facias de bonis ecclesiasticis et capias ad satisfaciendum* should not be set aside. It was argued for the grantee, that even admitting that the grant of the annuity out of the profits of the livings is void by the statute 13 Eliz. c. 20, still the covenants of the defendants, which are personal covenants to pay the annuity, are good. And, at all events, the warrant of attorney is not affected by the invalidity of the deed, the consideration of which, as appears by the warrant of attorney, was £700 borrowed. For the grantor it was argued, that the grant of the rent-charge out of the livings is void by the common, the canon, and the statute law. It is void by the common law; this comes within the principle of those cases in which it has been holden, that the assignment of the half-pay of an officer of the army is void; the profits of livings being given for the dignity of the church, and for the decent support of the incumbents. In *Linw.* 149, it appears, that sales and mortgages of benefices were prohibited by the canon law. And in *Vaugh.* 327, it is said, that "a lawful canon is the law of the kingdom. But however the grant of this rent-charge may be affected either by the common or canon law, it is clearly void by the statute 13 Eliz. which it was said was scarcely denied by the plaintiff's counsel. That statute extends to sales, mortgages, and charges of every kind upon livings; therefore, the profits of benefices cannot be charged or taken for the payment of debts. Then, if the grant of the rent charge be "utterly void," according to the words of the statute, the warrant of attorney which was given, not for any other consideration, but as it is expressly stated in the memorial, "as a collateral security for payment of the said annuity," is also void; and the court will permit the defendants to take advantage of this objection

GRANT AND DEMISE OF BENEFICE.

for the price or sum of —— hundred pounds (*d*). AND WHEREAS, for better securing the payment of the said an-

Recital of grantor's bond for paying annuity.

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on a summary application, because this is is the only opportunity they have to avoid the effect of the warrant of attorney. Then it is said, that the defendant's covenants in the deed may be enforced, because they are personal covenants: but, in the first place, the same observation that applied to the warrant of attorney is also applicable to these; they are covenants to pay the *same annuity*, or rent-charge, and if the grant of the rent-charge be itself void, the covenants to pay it must also be void.† Lord Kenyon, C. J. said, "Many cases have been cited, and the

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Mr. Plowden, the founder of the modern doubts, seems to have grounded his objections on Catholic notions.

† Mr. Francis Plowden, who may be considered as the founder of the modern objections on the subject of the above note, was the most urgent advocate for invalidating the above grant; his arguments are stated in detail in Plowden on Usury, 296, 306, being the first law book in which doctrines, "according to Lord Kenyon's expression, contrary to common honesty," (7 Durnf. & East, 554, *ante*, Vol. 1, 523,) were publicly broached. The *data* of his reasoning, however far fetched, might have had a plausible appearance, if the Catholic religion had continued the established religion of this country, and the clergy had been obliged to maintain their ancient hospitality, and had not been, as under the Protestant religion, permitted to dispose of the profits of their benefices in such manner as they think proper. Indeed, it is extremely singular that Mr. Plowden, who was himself a Catholic, should have been so furiously zealous in supporting, according to his notions, the dignity of a Protestant church, by enabling her clergy to evade their contracts. The canon referred to by Mr. Plowden in *Lyndwood's Provinciale*, 149, edit. 1679, was made by Stephen Langton, Archbishop of Canterbury, at a Provincial Council held at Oxford in 1222; it only extended to the clergy of that archbishopric, and even as to them it only prohibited such alienations as were made *without observing the form of the canon. Causa* 12, *ques.* 2, referred to in the commentary, is full of canons to this purpose; but it seems, the 56th canon, which obliges him who

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SURETIES.

(*d*) If there be sureties, (which, on account of the above mentioned doubts, is a prudent precaution,) make them parties of the second part; and recite their agreement to join, and a joint and several bond, and a warrant of attorney, *ut ante*, Vol. 1, pp. 630—2; *or* separate warrants of attorney from each, without any bond, *ut ante*, p. 30. See a bond from a grantor with one surety, Vol. 1, p. 480, with two sureties, p. 502; to two or more as joint tenants, p. 515.

nuity, the said [*grantor*], by his bond or obligation in writing, under his hand and seal, bearing even date with

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common, the canon, and the statute law has been resorted to by the counsel for the defendants. But I think that none of the cases cited are applicable to the present. The ground of decision in those cases, in which it was holden that the half-pay of officers in the army could not be assigned, was, that the officers have no fixed durable interest in it, as the clergy have in their benefices, but that it depends on the bounty of the crown, that allows them certain benefits to enable them to attend whenever their services may be required. The canon law has been referred to, as if all the canons were part of the law of the land; but those canons only that have already been incorporated into our law are considered as part of the law of England. Some of the canons, indeed, mentoined in Linwood, have been so incorporated; but whether or not the canon that has been cited from that book has been received into our law may be known by referring to our statutes. If the canon relied on were part of our law, all the disabling and restraining statutes were nugatory. That before the passing of those statutes there existed a power in ecclesiastical bodies to alienate the possessions of the church, and that there still exists a power in them, modified in the manner prescribed by those statutes, cannot be doubted; the prohibition on alienations by the clergy is therefore to be learnt from those statutes. I am not prepared to say that the statute, 13 Eliz. c. 20, may not extend to this case; but I deny that the consequence contended for follows, that therefore the present rule must be made absolute. Even admitting that every thing that was done by the defendant, Leake, to charge or to affect the livings directly is absolutely void, still the defendant's argument on this point is not true in its extent; it was said, that in no case can the profits of a benefice be applicable to the payment of debts; but if that were so, what is to become of all the process *de bonis ecclesiasticis?* Now in this case, one of the defendants executed a deed, by which he granted an annuity or rent-charge out of certain benefices; that is not *malum in se*, there is nothing wrong in such a transaction except as far as it is prohibited by the statute; if, indeed, there had been any moral turpitude mixed in it, I would have followed it in all its consequences: but a deed that was intended to operate

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alienates from the church to give as much of his own as he takes away, is the canon particularly meant. [However, that canon forms no part of our law, see P. Wms. 32; 1 Ld. Raym. 7; 2 Durnf. & East, 355; 2 Kyd on Corporations, 222. *Note by Mr. B.*]

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these presents, hath become bound unto the said [*grantee*] in the penal sum of [*double the consideration money*]

one way may operate another way, *ut res magis valeat quam pereat*, if honesty requires it. Then why may not this deed, which was intended to operate as a rent-charge upon the living, have effect as a personal security against the grantor, containing as it does a covenant to pay the annuity? A deed of feoffment may, if there be no livery, operate as a covenant to stand seised to uses; and so in many other instances. I will not, however, give any judicial opinion whether or not this deed be void by the statute of Elizabeth, which certainly contains some very strong expressions: the reason of making that act was, because in former times the patron sometimes presented a needy incumbent, who, being content to take the living on any terms, agreed to grant leases in favour of the patron himself. And I should object to any thing being done obliquely, that such a statute prohibited beng done directly. But in this case I cannot say that the letter of attorney is void." There was another point in the case, stated *ante*, Vol. 1, p. 460, in which the defendants also failed. His lordship concluded his decree in these words: "I am glad to find that the judgment I am about to give coincides with my wishes on this occasion; and that the law and justice of the case meet in the same point."

Held, that as a parson cannot convey his benefice, it does not pass to his assignees under an Insolvent Debtors' Act.

However, in February 1803, in *Arbuckle* v. *Cowton*, 3 Bos. & Pul. 321, where it was held, that the profits of an ecclesiastical benefice do not pass to the assignees under an Insolvent Debtors' Act, though included in the insolvent's schedule, Lord Alvanley, in delivering the judgment of the court, said, p. 328, "At common law a parson could make no lease to bind his successor, unless confirmed by the patron and ordinary. In the reigns of Hen. 8. and Elizabeth, several statutes were passed, introducing further restrictions with respect to the power of ecclesiastics over their benefices. Until the 13 Eliz. c. 20, they all appear to have been made for the benefit of the successor; so great was the anxiety of the legislature, however to prevent ecclesiastics from divesting their own rights, that the statute 13 Eliz. c. 20, explained by 18 Eliz. c. 11, empowers them to take advantage of their own non-residence to defeat *leases* made by themselves. Such has been determined to be the effect of that statute in the late case of *Frogmorton* dem. *Fleming* v. *Scott*, 2 East, 467." That case was decided before the part of the 13 Eliz. c. 20, relating to non-residency, was repealed, and the rector was permitted to take advantage of his own wrong, by annulling a lease made by himself, on the ground that the lease was avoided in consequence of his own non-residence. Similar decisions had previously been made in *Cox's* case, 3 Leon. 102 (*Jen-*

pounds; with a condition thereunder written for making the same void, if the said [*grantor*], his heirs, executors,

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nings v. *Haithwaite*, Yelv. 106; and see *Doe* dem. *Crisp* v. *Barber*, 2 Durnf. & East, 749; Degge's Parson's Counsellor, 125, 6th ed. The chief, if not the only intention of that part of the act, was to prevent non-residence; and it was by those decisions accomplished. So far certainly that part of the statute may be said to be made for the benefit of the incumbent for the time being, if a man can acquire any real benefit from such a dishonourable proceeding. In a moral point of view, it is highly to be regretted, that any man, but more especially a clergyman, should have been permitted to avoid his own contract deliberately made, by taking advantage of his own misconduct, and thereby injuring an innocent person. See *Atkinson* v. *Folkes*, 4 Bac. Abr. Gwill. ed. 97. But these decisions were on another branch of the statute, and do not directly affect the question of *charging*. Lord Alvanley added, "it is now clearly established, that the half-pay of an officer is not assignable; and unquestionably any *salary* paid for the performance of a public duty ought not to be perverted to other uses than those for which it is intended. Notwithstanding the case of *Stewart* v. *Tucker*, 2 Wm. Bla. 1137, in which it was held, that the half-pay of on officer was assignable in equity, it was expressly decided in *Flarty* v. *Odlum*, 3 Durnf. & East, 681, that it was not assignable at all, which decision met with general approbation.† This doctrine is very analogous to that which has been adopted with respect to ecclesiastics; the same policy is applicable to both cases. Whatever advantage might be derived through the intervention of the ordinary, I am of opinion that by no *conveyance* of the party himself could he divest himself of his benefice." p. 330. The principle on which this case is founded appears to be very questionable. For the supposed analogy of the decisions in relation to the pay of officers, and those which have enabled ecclesiastics to defeat their own leases in consequence of their own non-residence, did not exist. The former decisions were founded purely on principles of public policy; whereas the latter were founded entirely on a clause of a positive act of parliament; and since the repeal of that clause, such a decision cannot be made. Therefore, the fallacy of the principle of public policy, by analogy to the case of a public grant, to continue during the pleasure of the crown, is a strong objection to the principle of the case. That application of the principle is opposed by other authorities of equal, if not of greater weight. In *Stone* v. *Lidderdale*, 2 Anstr. 542,

There is no analogy on a principle of public policy between an assignment of an officer's pay, and a clergyman being formerly permitted to avoid his lease, in consequence of his own non-residence.

† As to the decisions on assignments of officer's pay, pensions, &c. and the principles on which they were grounded, *vide post*, p. 290.

Assignments of officer's pay.

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[*253]

or administrators, should well and truly pay, or cause to be paid unto * the said [*grantee*], his executors, adminis-

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Judges are not to enter into general abstract notions of public policy, in opposition to the intention of the parties.

Lord Chief Baron Macdonald, in delivering the judgment of the Court in relation to the half-pay of an officer, said, "the courts of justice are not indeed to enter into any general abstract notions of public policy in their decisions, in opposition to the express intention of the parties; but in deciding upon the nature of a *public grant*, the great object of public policy in making that grant is to be attended to." And Lord Kenyon had previously held, that as clergymen have a fixed durable interest in their benefices, there was no analogy between charges on the profits of their benefices, and assignments of officers' pay, *ante*, p. 262.

No analogy between charges on benefices, and assignments of officer's pay.

Principles of public policy should be cautiously applied to the revenues of the clergy;

but if resorted to, should enforce the payment of their debts.

Principles of public policy should, at the present day, be cautiously applied to the revenues of the clergy; for supposing that tithes were not originally granted by individuals for expiating crimes, and for saying masses for the repose of the dead, but that they were a *public* grant to ecclesiastics, the minds of men are thereby forced to the consideration of the several purposes for which tithes were granted. See 1 Bla. Com. 385; 2 Wooddeson's Vinerian Lectures, 85; Burn's Justice, tit. *Poor*, § 1. However, if a principle of public policy must be resorted to, it would rather require, that, after allowing a sufficient sum for performing the services of the church, and for maintaining the incumbent and his family, as in the case of a sequestration, the profits of a clergyman's benefice should be appropriated to payment of his debts, than that he should have been permitted to retain the whole profits of his benefice, and be discharged from paying his debts by a statute, the very principle of which was, that the property of the insolvent should be given up for the benefit of his creditors. Besides, it was useless for his lordship to refer to any advantage to be derived through the intervention of the ordinary, after the Insolvent Debtors' Act had freed the clergyman from payment of his debts; as the foundation of a sequestration must have been an action at law, where a discharge under that statute might have been pleaded in bar. The injustice of the consequences of this decision is now remedied by the Insolvent Debtors' Act, [7 Geo. IV. c. 57, s. 38, by which the assignee or assignees of the estate and effects of a beneficed clergyman discharged under the act, are empowered "to apply for and obtain a sequestration of the profits of any such benefice, for the payment of the debts of any such prisoner, and the order of adjudication made in the matter of such prisoner's petition in pursuance of this act shall be a sufficient warrant for the granting of such sequestration, without any writ or other proceedings to authorize the same; and such sequestration shall accordingly be issued, as the same might have been issued upon any writ of *levari facias*,

Sequestration of the profits of an insolvent's benefice may be obtained by his assignees.

trators, or assigns, the said annuity or clear yearly sum of —— pounds, in the manner, and on the days hereinafter

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founded upon any judgment against such prisoner."] Under which act, an annuity creditor of an insolvent debtor may receive dividends, in the same manner as if the insolvent had been a bankrupt. *Vide ante*, Vol. 1, p. 472, 478. The legislature have so far destroyed the application of his lordship's principle of public policy. Indeed, they are dangerous doctrines; they leave too much discretionary power in the breasts of the judge; and whenever they are attempted to be extended, in order to invalidate *boná fide* contracts, they should be regarded with a very jealous eye. Lord Camden has justly said, "The discretion of a judge is the law of tyrants; it is always unknown; it is different in different men; it is casual, and depends upon constitution, temper, and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly, and passion, to which human nature is liable." *Doe* v. *Kersey*, Fearne, 429, 3d edit. 535, Butl. edit. See also *Rooke's case*, 5 Co. 99 *b*. *Cowper* v. *Cowper*, 2 P. Wms. 753. *Burgess* v. *Wheate*, 1 Wm. Bla. 123. 3 Bla. Com. 396, and Beccaria on Crimes, ch. iv. But independently of these objections, the latter part of Lord Alvanley's judgment is in direct opposition to *Magdalen College case*, and to the other authorities, cited *ante*, p. 256, 258, if his lordship meant that a clergyman cannot charge or convey the *profits* of his benefice, so as to bind himself. That a parson cannot at this day make another person the clergyman, by granting over his incumbency, and so divest himself of his benefice, is clear from the resolution of the Court in *Grendon* v. *The Bishop of Lincoln*, 2 Plowd. Com. 496—7; but even there it was held, that he might make a valid lease of the glebe and tithes.

Precedents *sub silentio*, on the rule *communis error facit jus*.

It will be requisite in the next place to advert to the precedents *sub silentio*, which, when there are no judicial precedents to the contrary, are admitted to our Courts as authority. 1 P. Wms. 223, on the rule *communis error facit jus*. 4 Inst. 240. Co. Litt. 186, a. and Hargr. n. (3). Wingate's Max. 752. Noy's Max. 37, 9th edit. 16 Vin. Abr. 500. Sug. Pow. 53, 3d edit. For there have been many cases in which annuities charged on church livings have been endeavoured to be set aside; but in none of them, excepting *Mouys* v. *Leake*, has that part of the statute, 13 Eliz. c. 20, relating to chargings, been urged as an objection to the validity of the grant. Thus in 1741, *Errington* v. *Howard* and others, Ambl. 485, a rector entitled to an annual stipend of 125*l*. in lieu of tithes, in consideration of 640*l*., assigned it to the plaintiff for ninety-nine years, if the rector should so long live, upon trust to retain an annuity of 80*l*. and pay the residue to the rector: afterwards the

Assignee of a rector's stipend entitled in equity to priority to a judgment creditor in receipt

GRANT AND DEMISE OF BENEFICE.

mentioned. And whereas, in further pursuance of the said agreement, and for better securing the payment of

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Recital of warrant of attorney.

of it under a sequestration.

rector gave a bond and warrant of attorney to a creditor to confess judgment, under which a *fieri facias* was taken out, and afterwards a *fieri facias de bonis ecclesiasticis*, and a sequestration of the stipend was granted for payment of the debt; but it was held, that the plaintiff was entitled to receive satisfaction for the arrears and growing payments of his annuity, prior to the judgment creditor who had sequestered, but without prejudice to 50*l.* a year allowed by the ordinary for performing the cure, and without prejudice to any sums received by the judgment creditor, before the time that notice was first given by the plaintiff of his demand. And in 1774, *Doe* dem. *Rogers* v. *Mears*, Cowp. 129, in ejectment brought against a creditor of the rector, to recover two rectories in his possession, under a sequestration, upon a case reserved for the opinion of the court, the facts were as follows. "That upon the 9th of May, 1766, the rector, in pursuance of an agreement, and in consideration of 360*l.*, demised the rectories in question to the lessor of the plaintiff for ninety-nine years, if the rector should so long live, for the purpose of securing to the lessor of the plaintiff an annuity of 60*l.* per annum, with a power of entry, and likewise a power of distress and sequestration, if the annuity were in arrear; that the annuity was in arrear; that the rector absconded in December, 1770, and had not been resident since." No witnesses were called on the part of the defendant, but it was admitted that he was in possession under a sequestration. A verdict was found for the plaintiff, subject to the opinion of the court upon the following question; "Whether the deed and the lease under which the plaintiff made his title was void by the statute 13 Eliz. c. 20?" Lord Mansfield said, "This is a very clear case. A sequestration under a *fieri facias* is no impediment or prevention to the serving a cure; and therefore the non-residence is a clear avoidance of the lease." But the latter branch of the statute was not even mentioned. See also *Murray* v. *Harding*, in 1773, 2 Wm. Bla. 859. 3 Wils. 390, S. C. In *Kelfe* v. *Ambrosse*, in 1798, 7 Durnf. & East, 551, MS. copy of the grant, the annuity was secured by the grantor's bond and warrant of attorney and deed of covenant; and as he had no church preferment at the time, he covenanted to charge any future church preferment, and to permit the grantee to sequester it: at the time application was made to have the securities delivered up, on the ground stated *antè*, Vol. 1, p. 522, he had church preferment; but the court refused the application. See also *Greathead* v. *Bromley*, 7 Durnf. & East, 445, in 1798, in which two annuities were secured by a demise of two rectories, and two different applications were made to

A sequestration upon a *fi. fa.* of a benefice with cure, was held to be no excuse for the non-residence of the incumbent: and a lease thereof made by him, for securing an annuity, was, on account of such absence, held to be void, before that part of 13 Eliz. c. 20, relating to non-residence was repealed.

A covenant to charge future church preferment not objected to when an annuity was attempted to be set aside.

the said annuity of —— pounds, the said [*grantor*] hath executed a warrant of attorney, bearing even date with

GRANT AND DEMISE OF BENEFICE.

the Court of King's Bench, to set the securities aside, for non-compliance with the Annuity Act, but which were refused; and the case was afterwards before Lord Alvanley at the Rolls, *Bromley* v. *Holland*, 5 Ves. 610, June, 1800, and on appeal in March, 1802, before Lord Eldon in Chancery, 7 Ves. 3; [*S. C.* Coop. 9]; but in neither instance was there any objection raised on the ground of the 13 Eliz. The annuity charged on a benefice in *Browne* v. *Rose*, 6 Taunt. 124, was granted in 1813, whilst the 13 Eliz. was repealed; and although there was a demise of the benefice to a trustee, upon trusts to secure the annuity out of it, and a warrant of attorney to confess judgment, yet no objection was made on the ground of the other modern objection, that the grant was contrary to the principles of public policy.

Mortgages and conveyances of benefices in trust for creditors have been frequently made.

Mortgages of church livings, and conveyances of them in trust for creditors, have been frequently made, and their validity has not been questioned. The writer of these observations has now before him a copy of a demise of a church living by a vicar for the benefit of his creditors, drawn in 1769, by the celebrated Mr. Ralph Bradley, the author of the MS. Practical Points in Conveyancing; and he has several demises of benefices in trust for creditors, and grants of annuities charged on them, settled and approved by deceased and living conveyancers of the greatest eminence. Indeed it is a notorious fact, that the practice of granting annuities on ecclesiastical benefices, collaterally secured by a covenant and warrant of attorney to confess judgment, and generally with a bond also, has been common for many years past. Beneficial consequences have resulted from this practice, as it has enabled clergymen to raise sums to apprentice their children, and make other certain provisions for their families, which they could not have done out of their annual income. See 3 Bos. & Pull. 324.

The practice of granting annuities on benefices collaterally secured has been common.

[In the late case of *Doe* d. *Cates* v. *Somerville*, 7 Barn. & Cres. 176, a demise by a rector of all the glebe lands, tithes, &c. to a trustee for securing an annuity, if the rector should so long live, which was executed in December, 1816, and therefore in the interval between the acts of the 43 & 57 of Geo. 3, was held to be good. The reason given for this decision, that *as the latter statute had not passed*, there existed at the time no statute against the validity of the grant, seems to imply an opinion, that since the statute such a demise would be void; but the case, it is obvious, did not raise the point, and therefore the opinion was extra-judicial.]

Assuming a direct charge on a benefice to be void by the statute 13 Eliz. c. 20, (in order to examine this subject in every point of view,) yet it has been a general opinion, that, under the warrant

Assuming a direct charge on a benefice to be void, it

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the said bond and these presents, thereby authorizing and empowering certain attornies therein named to confess a

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has been a general opinion that the grantee might sequestrate, under a warrant of attorney purposely given.

of attorney, the grantee might indirectly secure the annuity out of the profits of the living by means of a sequestration. *Vide post*, p. 285 (*q*); but there are exceptions to this general opinion. Therefore the various opinions of several eminent conveyancers on this important and interesting point are presented to the reader, in order to put him in possession of the most forcible objections that have been made. Thus the late Mr. Walker, although he thought a charge would be void by the 13 Eliz. c. 20, gave an opinion in 1801, that a person who intended advancing his money in purchasing an annuity, to be charged upon church preferment, might, he thought, safely advance it upon a bond and judgment; and that if the grantor of the annuity made default in payment, the annuitant might sequester the living. However, Mr. Atherley adds in a note to this opinion, "*quære*, if it could be proved, that the judgment was entered up with a view to enable the annuitant to come upon the living, the statute of Elizabeth being very strong." Atherley's MSS. Vol. 1, p. 106. So in one of Mr. Atherley's subsequent opinions, where an annuity was intended to be charged on an ecclesiastical benefice, the income of which arose chiefly from two farms belonging to the living, he said, "Upon these farms there is no doubt but a distress may be made, even in the hands of tenants whose leases were granted prior† to the annuity, after giving them notice of the annuity. *Moss* v. *Gallimore*, Dougl. 279. When I say there is no doubt but a distress may be made, I take it for granted that Mr. Butler is right in his opinion, that a clergyman may charge ecclesiastical property with annuities, or other incumbrances, during his own incumbency; though (as I said in my former opinion) I think he may, yet I think Mr. Butler has not sufficiently adverted to the distinction between a grant or lease reserving rent, and from which the incumbent is receiving an annual income, (and they are such grants and leases as these which have been held to be good as against the grantor,) and a grant or charge which diminishes or totally deprives him of his income; and which, consequently, deprives him of that decent support which his ecclesiastical character properly requires. There is no decided case, I believe, which has held such a grant or charge *as this* to be *good*; and my difficulty before was, whether the act of the 13th Eliz. c. 20, was not sufficiently strong to justify a court (in case the question came before it) in holding that such a grant was *not* good; for if such a question should arise, and the court should think

Doubts of Mr. Atherley and several other counsel, if the judgment be entered with a view to enable the annuitant to sequester, and on grounds of public policy.

[† According to a case at Nisi Prius, noticed *post*, Vol. 3, p. 386, (which has been since confirmed by the court,) the priority of the lease is immaterial.]

judgment against him in his Majesty's court of —— at Westminster, in an action of debt upon the said bond, at

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that a clergyman ought not, on the *ground of public policy*, to be at liberty to deprive himself of his income, by means of annuities or incumbrances; in that case, they might be induced to put the most extensive construction upon the act, which its literal import would bear, and, consequently, might hold that such a grant or charge was void. But though I think the ground of Mr. Butler's opinion is not very sound; yet, as I think that the act of the 13th Eliz. c. 20, was made solely for the benefit of the successor, so I still think that the intended grantee may venture to advance his money." Atherley's MSS. Vol. 3, p. 59; see also Atherley on Settlements, 72. Since the partial revival of the 13 Eliz. c. 20, several other gentlemen (who appear to look on the statute rather as a new act, without considering the purpose for which it was made and the evil it was intended to remedy, than as an act on which there have been uniform decisions for upwards of two centuries) have, upon the same principle as Mr. Atherley, expressed similar doubts. But the opinion which demands the most attentive consideration is the following, given by Mr. Preston, 21st May, 1821, in which he says, "The proposed security is to be given by way of charge on an ecclesiastical preferment. The statute of 13 Eliz. c. 20, was at one period repealed; the repealing statute is now repealed; so that the 13 Eliz. is in operation. For although a sequestration may, notwithstanding the statute, be issued on a judgment obtained in an action of debt, &c. yet judgment confessed, with a preconcerted arrangement that a sequestration should be issued so as to charge the living, would, in my opinion, be deemed a charge within the meaning of the 13 Eliz., in like manner as a judgment confessed for the purpose of having execution sued; and a term of years taken in execution would be deemed an assignment, in contravention of a condition in restraint of assignment. So, leases at annual rents less than the value, and given for the purpose of securing an annuity, would be deemed a charge within the meaning of the statute. Under this impression, I do not think the proposed security would be eligible to the intended purchaser of an annuity. In point of law, each sequestration takes priority according to the priority of the delivery to the sheriff of the execution, which is the foundation for the sequestration.† These sequestrations are the

Mr. Preston's opinion against the validity of judgments, if given under preconcerted arrangements that sequestrations shall issue.

[† Or rather it should seem according to the priority in the publication of the writs of sequestration; in the late case of *Bennett* v. *Apperley*, 6 Barn. & Cress. 630, it appeared that on the 15th of August, 1826, *A.* gave to *B.* a warrant of attorney to confess judgment for £1400, and on the 17th of the same month judgment was entered

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the suit of the said (*e*) [*grantee*], his executors or administrators, for the sum of [*double the consideration money*]

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mode of giving effect to executions against chattels. They are not executions against a freehold estate, so as to operate by way of priority,

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Publication of sequestration may be made before the return of the *lev. fac.*

up, and a *fi. fa.* issued, on which the sheriff returned *nulla bona*, certifying that the defendant was a beneficed clerk within the diocese of H. On the 7th of November, 1826, a writ of *lev. fac. de bonis eccles.*, directed to the Bishop of H., was issued, which was delivered on the 8th at his Registry Office, but no sequestrations were issued until the 26th of December, and publication did not take place until the 7th of January, 1827. On the 3d of October, 1826, *A.* gave a warrant of attorney to *C.* for £1400, upon which judgment was entered up on the 26th and a *fi. fa.* issued, which was delivered to the sheriff on the 5th of November, which being returned on the 6th, a *lev. fac.* was obtained and delivered at the Bishop's Registry Office on the 7th. In the same month of November sequestrations were issued, which were published on the 3d of December. Under these sequestrations possession of the profits of the living was obtained. *B.* had obtained a rule to show cause why his sequestration should not have precedence of the sequestration of *C.* on the ground of an informality in the mode of publication of the latter, and that it was not made until after the return of the writ of *lev. fac.*; but the court thought that the publication was sufficient, and need not be made before the return of the writ, observing that *the publication of notice was only necessary in order to give priority against conflicting rights;* and this, it was said, was the whole extent of the principle of the case of *Doe* v. *Bluck*, 3 Campb. 447; *et vide post*, 286.

It seems that priority of publication determines precedence.

The ordinary mode of publication is by causing a copy to be affixed to the church door, but any other mode of publication practised in the diocese will be sufficient, as by reading the writ in the parish church, &c. *Bennett* v. *Apperley*, 6 Barn. & Cress. 630.

Priority where several sequestrations are issued at the same time.

Where several sequestrations were issued at the same time, and through the same attorney, on judgments of different dates, confessed at the suit of several annuitants, and the bishop's registrar had entered the plaintiff's sequestration second in the series, though his judgment was first in point of date, the court held that his sequestration ought to have been first entered, and directed that it should have precedence. *Rex* v. *Bishop of London*, 1 Dowl. & Ryl. 486.]

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[(*e*) If by a public company, say, "[*trustees*], or the survivors or survivor of them, or the executors or administrators of the survivor of them, for the sum of," &c. *ut supra*.]

pounds, and costs of suit: And it is intended and agreed, that judgment shall be immediately entered up thereupon

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according to the date of the judgment." No decision was cited to support this opinion; but the case alluded to is *Doe* dem. *Mitchinson* v. *Carter*, 8 Durnf. & East, 57; where it was held, that an assignment to a person purchasing a term for years from the sheriff under a *bona fide* execution, would not amount to a forfeiture of a lease under a condition giving to the lessor a power of re-entry, in case the lessee, his executors, administrators, or assigns, should let, set, assign, transfer, or make over the lease, or the premises thereby demised, or any part thereof, without the consent of the lessor, his heirs or assigns. But that where, in such a case, the lessee gives a warrant of attorney to confess judgment to a creditor, for the express purpose of enabling such creditor to take the lease in execution under the judgment, it is in fraud of the condition, and the lessor, under the clause of re-entry for breach of the condition, may recover the premises in ejectment from a purchaser under the sheriff's sale. *Ibid.* 300. If it had been held, that in the latter case the lessee could take advantage of his own wrong and compel the lessor to re-enter, or that a lessee giving such a warrant of attorney in fraud of a condition making the lease *void* on alienation without consent might, by taking advantage of his own wrongful act, declare the lease absolutely void, and thereby discharge himself from performance of the covenants of the lease, then such a decision might, by analogy, have been with propriety extended to the case with which it is above compared. But it has been shown, *ante*, p. 258, 259, that neither the lessee nor his surety can take advantage of the breach of the condition; the lessor alone, against whom the fraud has been committed, and who is the only person injured by it, being entitled to avoid the lease. Besides, a parson, by giving a warrant of attorney to confess a judgment, although it be done under a preconcerted arrangement that an execution shall be issued to secure the arrears of the annuity when due, does not commit a fraud against any person. Until it be decided that the parson or some other person can take advantage of it as a charge within the meaning of the 13 Eliz. c. 20, how can the above decision, on a principle of analogy, be urged as a valid objection? Where a *fieri facias de bonis ecclesiasticis* had been actually obtained under a warrant of attorney to confess judgment, and it was endeavoured to be set aside as an indirect charge, and therefore within the meaning of the statute, Lord Kenyon expressly declared, that he could not say that the warrant of attorney was void. *Mouys* v. *Leake*, 8 Durnf. & East, 415, *ante*, p. 264. What adds considerably to the force of this opinion of his lordship, as opposed to the principle of analogy, drawn from the

The same judge who decided that a fraudulent execution to evade a condition against alienation was void, subsequently held that a sequestration under a warrant of attorney was not void.

accordingly. Now this indenture witnesseth, that, in pursuance and further performance of the said agree-

case of *Doe* dem. *Mackenzie* v. *Carter*, is, it was the opinion of the same chief justice who delivered the opinion of the court in that case, and was pronounced by him in the same court only five months after his former judgment. According to his lordship's opinion, there is no difference between a judgment obtained in consequence of an action vested, and a judgment signed under a warrant of attorney, since the latter is merely to shorten the process and to lessen the expense of the proceedings. 8 Durnf. & East. 61. If the warrant of attorney itself were a specific lien on the bendicio, that perhaps would have come within the words of the act, supposing it makes a charge void as against the person himself; but the warrant of attorney only gives the grantee power to enter up judgment against the person, and to sue out execution at a future uncertain period, in case the annuity should be unpaid for a certain number of days after it from time to time becomes due: and *non constat*, that the judgment will be followed up by the living being sequestered under that judgment; for if another person's execution be previously delivered to the sheriff,† as that execution (according to the above opinion) would have a priority, the grantee may be prevented from ever recovering his annuity by means of a sequestration under his judgment. Besides, if the modern objection be valid, both the bench and the bar have been in error for the past two hundred years! And if the new doctrine be followed to its extent the principle on a warrant upon no debt whatever contracted by a clergyman, whether by bond, covenant, or otherwise, can his living be sequestered: as every person, who becomes a creditor of an ecclesiastic, stands in that case, he remedies provided by the law for recovering his debt as well as because of a bargain, and so far. Moreover, on the above principles every creditor who sequesters may be said to be under a precontrived arrangement. Such a fact indeed never can be established, until by indirect means it be endeavoured to wrest the clergy a separate estate (which, and to exempt him from the common calamities which have hitherto been equally binding on all the subjects of the realm. If the conclusive consequences above mentioned should not necessarily follow, yet nevertheless another question must arise, on account of the difficulty of determining what shall and what shall not be a precontrived arrangement. It may be said, such difficulties have not occurred since the determination as to a prece-

* [Semb. † (or if another person's writ of sequestration be previously published, as that writ would have a priority," &c. note MS. p. 204.]

ment, * and in consideration of the sum of —— hundred pounds, of lawful money of Great Britain, in notes of the

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certed alienation of a lease, by means of a warrant of attorney; and, therefore those consequences are not to be expected. But we have seen, *ante*, Vol. 1, pp. 24, 39, that such a covenant is not usual, and that a lessor is not entitled to it, unless it be expressly mentioned in the agreement for the lease. Such a provision is very rarely inserted; and when it is, in most cases the lessor consents to assignment, as under the covenants the lessee's liability continues notwithstanding assignment. *Vide* Vol. 1, pp. 166, 282. [Vol. 4, p. 369.]

[In the late case of *Bennett* v. *Apperley*, 6 Barn. & Cress. 630, no objection appears to have been taken on the ground that the writs on which the sequestrations were founded, were obtained on warrants of attorney; but inasmuch as both the creditors, who in this case were contending for priority, claimed under securities of the same description, the case did not raise the point.]

Leases of benefices, for whatever purpose made, have never been questioned in any reported judgment, on account of inadequate rent.

Next as to the other point of the above objections.—Leases of benefices at annual rents less than the value, whether given for securing the payment of an annuity, or for any other purpose, have never been questioned in any reported judgment, as being void against the lessor, on account of the inadequacy of the rent. There is no case in which it has been decided, that the reservation of rent in a clergyman's lease is essential to make it binding on the lessor. But there certainly is a solitary *dictum* of Mr. Justice Popham, in the forty-third year of the reign of Queen Elizabeth, *Revil* v. *Hart*, Goldsb. 138, pl. 44, that "if rent be reserved, it is good against the parson himself, otherwise not." However, Justices Clinch and Gawdy immediately dissented from Popham, and said, "it is good against the parson himself;" and Lord Chief Baron Gilbert, who was more eminently learned in the law relating to leases, than any other judge who ever graced the bench, emphatically adds, in relation to Mr. Justice Popham's unsupported dictum, "but *quære?*" 4 Gwill. Bac. Abr. 119. *Leases* (H.) 1. To the opinion that leases at annual rents less than the value, whether given for securing an annuity, or (as there is no peculiar principle on this point exclusively applicable to annuities) for any other purpose, would be deemed a charge within the meaning of the statute, may be opposed the following case of *Heister* v. *Evans*, Dyer, 372, b. which is thus stated. One parson *Evans*, for one hundred pounds beforehand paid, in the sixteenth year of Queen Elizabeth, covenanted and granted by indenture to *Heister*, to suffer him and his assigns to enjoy a benefice for twelve years, and the lessor to serve the cure himself. In

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Governor and Company of the Bank of England, payable to bearer on demand, by the said [*grantee*], well and

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which indenture there was also a covenant, that the lessor should do no act whereby the benefice should become void during the said twelve years. And for performance of all covenants comprised in the indenture on the part of *Evans* to be performed, he was bound to *Heister* in a bond. In an action of debt upon the bond, the parson having pleaded his non-residence above eighty days in the twentieth year of Queen Elizabeth, as avoiding the lease, upon that plea the plaintiff demurred. The question was, whether the bond and the indenture, and all the covenants, were merely void by the statute 14 Eliz. c. 11, *ab initio*, or only after the absence for eighty days and more. No decision was given. There was no rent reserved by this lease, and the case was argued only ten years after the 13 Eliz. c. 20; and although that statute was directly under the consideration of the court, yet the modern objection, that such a lease was a charge within that statute, was not then thought of. The ingenious Sir Simon Degge, in relation to this case, says, "There is a *quære* in Dyer, whether such leases shall be void upon eighty days absence *ab initio*, or but from the time of absence by eighty days; but it seems to me, with some clearness, that it shall only be void from eighty days absence, and not *ab initio*. For first, the words of the statute are, that such lease shall endure no longer than the lessor shall be ordinarily resident, &c. So that till then it is to endure; and the statute closes, that upon such absence the term shall cease, which it could not do, if it had not a being before; for a thing cannnot cease to be, that has not been." And he expresses himself clearly, that such a lease was good against the lessor himself until his absence. Degge's Parson's Counsellor, 124, 125, 6th ed. That part of the 13 Eliz. c. 20, relating to non-residence, being now repealed, how can the parson himself, or any other person, avoid such a lease? It is clear from the 14 Eliz. c. 11, s. 14, that the intention of the legislature was not to frustrate a lease by a clergyman as against himself, because an inadequate rent, or no rent whatever, was reserved by the lease, as that act the very next year repealed a part of the 13 Eliz. c. 20, which might have borne such a construction. *Vide* the part in crotchets, *ante*, p. 251.

In all events, the bond and covenant are valid.

Supposing that as to the living, the charge and the warrant of attorney are void, the one as a direct and the other as a preconcerted charge, and that Lord Kenyon and the other modern and learned judges were in error when they permitted a warrant of attorney to stand as a security for an annuity charged on a benefice;—yet as the

truly paid to the said [*grantor*], immediately before the execution of these presents (*f*); the receipt and payment

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bond and covenant have been held to be valid, in the numerous cases before cited, until the practice sanctioned by those cases be overruled, and it be decided that no process *de bonis ecclesiasticis* shall in future be issued;—in an adverse proceeding in an action of debt on the bond or covenant, the grantee may get an execution for the debt and damages, or in an action on the covenant he may get an execution for his damages and costs. In both of which cases, a *fieri, levari,* or *sequestrari facias de bonis ecclesiasticis,* may be issued to make or levy the sum recovered of the *ecclesiastical* goods and chattels of the defendant. Tidd's Prac. 4, 1003, 1039, 7th edit. *Et vide post,* 285, (*q*). Some of the inconveniences of an adverse proceeding are, the expenses will be increased, and it will be longer before the grantee can obtain a sequestration, than it would be under a warrant of attorney to confess judgment.

The conflicting authorities on the question, whether all the instruments given to secure an annuity must be set aside merely because one only is not properly memorialized, does not affect this point, because that question arose entirely under the annuity act. In *Hart* v. *Lovelace,* 6 Durnf. & East, 476, Lord Kenyon said, "the strong inclination of my opinion is, that any defect in the memorial of one of the deeds will vitiate the whole assurance." His Lordship's mind seems to have been influenced by *Hopkins* v. *Waller,* 4 Durnf. & East, 464. *Hood* v. *Burlton,* 2 Ves. jun. 34; but the Court of King's Bench had, previously to the case of *Hart* v. *Lovelace,* decided that a defect in the memorial vitiated only the particular instrument. *Ex parte Chester,* 4 Durnf. & East, 694. The point however seems to have been settled even before the 3 Geo. 4, c. 92, entirely set it at rest; for in *Brown* v. *Rose,* 6 Taunt. 139, which was a grant of an annuity on a benefice, Chief Justice Gibbs, in delivering the opinion of the court, said, "though it was held in the case of *The Duke of Bolton* v. *Williams,* 4 Bro. C. C. 310, that a defect in one of the instruments affected all, we cannot think that such was the intent of the legislature. We think it was only meant, that the want of the prescribed observances should vitiate the particular security; for on looking into the act, it appears there may be different

Under the annuity act a defect in the memorial of one of the assurances vitiates only the particular instrument.

(*f*) If the annuity be purchased by a public company, say, "which said sum of —— hundred pounds was the proper money of the said society or partnership, and was so paid by the said [*trustees*] as aforesaid, on the behalf of the same society or partnership; the," &c. *ut supra.*

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whereof, he the said [*grantor*] doth hereby admit and acknowledge; and of and from the same, and every part thereof, doth by these presents acquit, release, and for ever discharge, the said (*g*) [*grantee*], his executors, adminis-

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memorials of the different deeds, and that the deeds may be executed at different times; and therefore we think the intent is, that only the particular assurance shall be void, with respect to which the requisites of the statute are not complied with."

Before concluding, it seems requisite to observe, that the partial revival of the statute has not been generally known; most probably, it was not anticipated by the legislature; and it would be unjust to suppose that it was a contrivance of the persons who were anxious to introduce the 57 Geo. 3, c. 99. But if at the time the latter statute was made, the partial revival of the 13 Eliz. c. 20, was contemplated, in order to invalidate future charges, &c. the authors of the revival must and will be disappointed in their expectations, unless the whole current of authorities be hereafter entirely overruled. For it appears, according to the old text writers, and the decisions of the judges who lived in the reign when the statute was made, and who, consequently, must have well understood its *intent and meaning*;—the uniform practice of the old conveyancers;—and the precedents established *sub silentio*, by the determinations of the greatest modern judges, without any judicial precedents to the contrary;—that, as the part of the 13 Eliz. c. 20, relating to chargings, was intended for the benefit of the successor only, a clergyman may, as against himself, directly charge his living; or demise it by way of mortgage, or upon trusts for his creditors, or for securing an annuity without reserving any rent.—Opposed to this conclusion, is an unsupported *dictum* of Mr. Justice Popham, that a reservation of rent is essential to the validity of a demise; some loose notions of Lord Alvanley, about principles of public policy, subsequently negatived by the legislature; and the doubts of some counsel of the present day, apparently founded on probable decisions to be expected hereafter on doubtful principles of analogy.

Conclusion.

Under the statute, it does seem to be impossible that an attempt should be made to evade charges and demises of benefices, as "*corrupt* AND *indirect dealings*," within its intent and meaning.

(*g*) If the annuity be purchased by a public company, say,

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"[*trustees*], their executors, administrators, and assigns, and also the said society or partnership; *He*," &c. *ut supra*.

It is not necessary to notice the society or partnership afterwards.

trators, and assigns; HE the said [*grantor*], *hath* given, granted, bargained, sold, and confirmed; *And* by these presents **doth* give, grant, bargain, sell and confirm unto the said (*h*) [*grantee*], his executors, administrators, and assigns, ONE annuity, or clear yearly sum of —— pounds, of lawful money of Great Britain, to be charged and chargeable upon, and to be issuing, payable, had, received, and taken, from and out of ALL THAT the said rectory (*or* vicarage, *or* perpetual curacy) of the parish church of —— aforesaid; *And also* upon, from, and out of all the messuages or tenements, houses, out-houses, edifices, buildings, glebe lands, and grounds whatsoever thereunto belonging, or in any wise appertaining; *And also* upon, from, and out of all the tithes, tenths, modusses, and compositions for tithes, pensions, rents, yearly payments, stipends, oblations, obventions, portions, profits, surplice *fees, Easter dues, and all other fees and dues, services and emoluments whatsoever, arising, growing, renewing, or increasing, within the said parish of ——, and belonging to the said rectory (*or* vicarage, *or* perpetual curacy), or therewith usually held, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof, or of any part thereof; and also upon, from, and out of every part and parcel of the same, with their and every of their rights, members, and appurtenances. TO HAVE, hold, receive, perceive, take, and enjoy the said annuity or clear yearly sum of —— pounds, unto the said [*grantee*], his executors, administrators, and assigns, henceforth for and during the term of ninety-nine years (*i*), *if* the said [*grantor*] should so

GRANT AND DEMISE OF BENEFICE.

Grant by a clergyman of an annuity charged upon

[*255]

rectory, &c.

glebe lands, tithes, &c.

[*256]

Habendum for 99 years, if grantor should so long live.

(*h*) If the annuity be purchased by a public company, say, "[*trustees*], their executors, administrators, and assigns, ONE, &c." *ut supra.*

PURCHASE FOR A COMPANY.

The covenants, &c. should be made with the trustees, their executors, &c. just as if the purchase had been made by them on their own behalf as joint tenants.

(*i*) The words "and continue to be rector, &c. of the said parish," should be omitted in this deed, for the reasons stated *ante*, Vol. 1, p. 75, (*d*).

GRANT AND DEMISE OF BENEFICE.

long live (*k*): to be paid and payable unto the said [*grantee*], his executors, administrators, and assigns, at or in
[*257] * the common dining hall of Lincoln's Inn, in the county of *Middlesex*, by equal quarterly payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, without any deduction or abatement out of the same, or any part thereof, on any account whatsoever, either by authority of parliament or otherwise. The first quarterly payment of the said annuity, or clear yearly sum, to become due, and be made on the —— day of ——, now next ensuing, provided the said [*grantor*] should be then living: and in case the said [*grantor*] should die during the said term of ninety-nine years, and between or in the interval of any two of the said quarterly days of payment, and either before or after the said —— day of —— next, then such part of the said annuity of —— pounds, as shall be in proportion to the time or number
[*258] *of days which, inclusive of the day of the decease of the said [*grantor*], shall have elapsed, prior to his decease, and after the day of payment next and immediately preceding that event, or as the case shall require, next after the day of the date of these presents, to be paid to the said [*grantee*], his executors, administrators, or assigns, immediately after the decease of the said [*grantor*], and demand made thereof. AND THE said [*grantor*] doth hereby also grant unto the said [*grantee*], his executors, administrators, and assigns, that from time to time, when and as often as it shall happen that the said annuity or clear yearly sum of —— pounds hereby granted or intended so to be, or any part thereof, shall be in arrear and unpaid, in the whole or in part, by the space of twenty-one days next over or after any one of the days or times whereon the same is hereinbefore ap-
[*259] *pointed to be paid as aforesaid, Then, and so often, and from time to time, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and as-

Power of distress on a rectory, glebe lands, &c.

[(*k*) An Annuity for years out of a parsonage shall be *bona notabilia* where the parsonage is. *Vere* v. *Jefferies*, Dyer, 305, a. *in marg.*]

GRANT AND DEMISE OF BENEFICE.

signs, into and upon the said rectory (*or* vicarage, *or* perpetual curacy), of the parish church of ——, and the messuages or tenements, glebe lands, hereditaments, and premises, hereby charged and made chargeable with the said annuity or clear yearly sum of —— pounds, or into and upon any part thereof, to enter and distrain for the same annuity, and all the arrears thereof: and the distress and distresses then and there found, to detain, manage, sell, and dispose of, in the same manner in all respects as distresses for rents reserved upon leases for years may be, are, or ought to be detained, managed, sold, and disposed of; and as if the said annuity or clear *yearly sum of —— pounds, was a rent reserved upon [*260] a lease for years: to the intent, that the said [*grantee*], his executors, administrators, or assigns, shall or may thereby, therewith, or otherwise, be fully satisfied and paid the said annuity, or clear yearly sum of —— pounds, and all the arrears thereof, and all costs, charges, and expenses to be occasioned by the nonpayment thereof, at the days or times and in manner hereinbefore appointed for payment of the same. And the said [*grantor*] doth also grant unto the said [*grantee*], his executors, administrators, and assigns, that from time to time, when and as often as it shall happen, that the said annuity or clear yearly sum of —— pounds, or any part thereof, shall be in arrear and unpaid, by the space of twenty-eight days, next over or after any one of the said days whereon the same is hereinbefore appointed to be paid as aforesaid; *then, and so often, and from time to time, and either [*261] upon, or at any time after the expiration of the said twenty-eight days, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, although no legal or formal demand shall have been previously made for such arrears of the said annuity or clear yearly sum, into and upon the said rectory, (*or* vicarage, *or* perpetual curacy), messuages, or tenements, glebe lands, hereditaments, and premises, hereby charged, and made chargeable with the said annuity or clear yearly sum of —— pounds, or into and upon any part thereof, in the name of the whole, to enter, and the same to have, hold, and enjoy, and the rents and profits thereof, and of

Power of entry on a rectory, glebe lands, &c.

GRANT AND DEMISE OF BENEFICE.

[*262] every part thereof, to receive and take, to and for his and *their own use and benefit, until he and they shall thereby or therewith, or otherwise, be fully satisfied and paid the said annuity or clear yearly sum of —— pounds, and all the arrears thereof, and also so much of the same annuity or clear yearly sum as from time to time shall incur and grow due during such time as the said [*grantee*], his executors, administrators, or assigns, shall continue in possession of the same hereditaments and premises, after every such entry as aforesaid; and also all such costs, losses, charges, damages, and expenses, as shall be occasioned by the nonpayment of the said annuity or clear yearly sum of —— pounds, or of any part thereof, at the days and times and in manner aforesaid: and such possession, when taken, to be without impeachment of waste, so far as he the said [*grantor*] can grant that exemption.

Second Testatum.

[*263] AND THIS *INDENTURE ALSO WITNESSETH, that for further, better, and more effectually securing the said annuity or clear yearly sum of —— pounds hereby granted, or intended so to be, and for the consideration aforesaid, and also in consideration of ten shillings of lawful money of Great Britain, to the said [*grantor*], paid by the said [*trustee*], immediately before the execution of these presents, the receipt whereof is hereby acknowledged, *The* said [*grantor*], on the nomination, and by the direction and appointment of the said [*grantee*], testified by his executing these presents, *hath* granted, bargained, sold, leased, and demised; *And* by these presents *doth* grant, bargain, sell, lease, and demise unto the said [*trustee*], his executors, administrators, and assigns, ALL THAT the said rectory *(*or* vicarage, *or* perpetual curacy) of the parish church of —— aforesaid; *And also* all the messuages or tenements, houses, outhouses, edifices, buildings, glebe lands, and grounds whatsoever thereunto belonging, or in any wise appertaining; *And also* all the tithes, tenths, moduses, and compositions for tithes, pensions, rents, yearly payments, stipends, oblations, obventions, portions, profits, surplice fees, Easter dues, and all other fees and dues, services and emoluments whatsoever, arising, growing, renewing, or increasing within the said parish of ——, and belonging to the said rectory (*or* vicarage, *or*

Demise of rectory, glebe lands, tithes, &c. to a trustee.

Parcels.

[*264]

GRANT AND DEMISE OF BENEFICE.

perpetual curacy), or therewith usually held, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known, as part, parcel, or member thereof, or of any part thereof; with their and every of their rights, members, and appur- [*265]
*tenances (*l*). To HAVE AND TO HOLD the said rectory (*or* vicarage, *or* perpetual curacy), messuages or tenements, glebe lands, tithes, tenths, and emoluments, and all and singular other the premises hereby granted or demised, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, unto the said [*trustee*], his executors, administrators, and assigns, from the day next before the date of these presents, for and during, and unto the full end and term of ninety-nine years, thence next ensuing, and fully to be complete and ended, if the said [*grantor*] should so long live; without impeachment of, or for any manner of waste, so far as the said [*grantor*] can grant that exemption: *Nevertheless* UPON THE TRUSTS, and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, and agreements hereinafter expressed and declared (*m*), [*266]
*AND (*n*) for further, better, and more effectually securing the said annuity, or clear yearly sum of —— pounds, hereby granted, or intended so to be, and for the considerations aforesaid, *he* the said [*grantor*] *hath* made, ordained, constituted, and appointed, and by these pre-

Habendum for 99 years, if the grantor should so long live.

Upon the trusts &c. hereinafter declared.

Power of attorney to receive and recover rents of rectory and glebe lands and the tithes and other ecclesiastical dues.

(*l*) As the grantee retains a reversion, the clause of "All the estate," &c. would be improper. (*Vide* Vol. 1, pp. 537, 538, and the note to this clause, GRANT, AND UNDERLEASE, *post*.)

(*m*) If a nominal rent be reserved, in deference to the opinion of Mr. Justice Popham, stated *post*, p. 278, it may be introduced here, thus:

"YIELDING AND PAYING therefore, unto the said [*grantor*] and his assigns, yearly and every year, during the said term of ninety-nine years, determinable as aforesaid, the rent of *One pepper corn*, if the same rent should be lawfully demanded."

Nominal *reddendum*.

(*n*) It is not usual to insert this power of attorney, but *ex abundanti cautela*, and on account of the doubts, stated in the above note, it has been deemed a prudent addition. If the parties think fit, a receiver may be appointed, as in the next precedent, or by a separate deed.

Power of attorney to receive rents, a prudent addition in a charge of an annuity.

GRANT AND DEMISE OF BENIFICE.

sents *doth* make, ordain, constitute and appoint, the said [*trustee*] his executors, administrators, and assigns, his true and lawful attorney and attornies, irrevocably, for the said term of ninety-nine years, determinable as aforesaid, in his or their own name or names, or in the name of him the said [*grantor*], as shall be most proper and convenient; but upon the trusts, and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, and agreements hereinafter expressed and declared, to ask, demand, sue for, recover, and receive, of

[*267] *and from all and every persons and person liable or willing to pay the same, all the rents, issues, profits, produce, and proceeds of the said rectory (*or* vicarage, *or* perpetual curacy), messuages or tenements, glebe lands, tithes, tenths, moduses, and compositions for tithes, pensions, rents, yearly payments. stipends, oblations, obventions, portions, profits, surplice fees, Easter dues, and all other fees and dues, services and emoluments whatsoever hereinbefore mentioned, and hereby demised or otherwise assured, or intended so to be: *And* upon receipt thereof,

[*268] *or of any part thereof, to give sufficient receipts, releases, and discharges for the same: *And* to constitute and appoint such attorney or attornies to act under him or them as shall be thought proper: *And generally* to do and perform all other acts, deeds, matters, and things, in and about the premises, as fully and effectually, to all intents and purposes, as the said [*grantor*] might or could do, if these presents had not been made. *And* the said [*grantor*] doth hereby ratify, allow, and confirm, and pro-

[*269] mise *and undertake to ratify, allow, and confirm, all and whatsoever the said attorney or attornies, or his or their substitute or substitutes, shall or may lawfully do or cause to be done in or about the premises, agreeably to the true intent and meaning of these presents. AND *it is hereby declared and agreed*, by and between the said parties to these presents, that the said term of ninety-nine years, determinable as aforesaid, and also the said power or authority hereby respectively granted and given unto the said [*trustee*], his executors, administrators, and as-

Declaration that the term and power are granted and given to the trustee,

[*270] signs, *are respectively granted and given to him or them, UPON THE TRUSTS, and for the ends, intents, and purposes,

upon the fol-

GRANT AND DEMISE OF BENEFICE.

and with, under, and subject to the powers, provisoes, and agreements hereinbefore referred to, and hereinafter expressed and declared; that is to say; UPON TRUST, that in case, and when and as often as the said annuity or clear yearly sum of —— pounds, or any quarterly payment thereof, shall be in arrear and unpaid in the whole or in part by the space of forty days, next after any one of the days or times hereinbefore appointed for payment thereof, the said [*trustee*], his executors, administrators, or as- *signs, do and shall, by and out of the rents, issues, and profits of the said rectory (*or* vicarage, *or* perpetual curacy), messuages or tenements, glebe lands, tithes, tenths, emoluments, and premises hereby demised, or otherwise assured or intended so to be, or by mortgage or sale thereof, or of a competent part thereof, for all or any part of the said term of ninety-nine years, determinable as aforesaid, or by bringing actions against, or making distresses upon, all and every, or any one or more of the present or future tenants of the said hereditaments and *premises, for recovery of the rents then in arrear, or by making entries upon the same hereditaments and premises, or by all and every, or any one or more of the said ways and means, or by any other lawful and reasonable ways and means whatsoever, levy and raise such arrears of the said annuity or clear yearly sum of —— pounds, as from time to time shall become due and remain unpaid; together with all such damages, costs, charges, and expenses as the said [*grantee*], his executors, administrators, or assigns, shall incur, sustain, or be put unto by reason *of the nonpayment of the said annuity or clear yearly sum of —— pounds, or any part thereof; together with the costs, charges, and expenses attending the execution of the trusts of the said term of ninety-nine years. AND UPON THIS FURTHER TRUST, that the said [*trustee*], his executors, administrators, and assigns, do and shall in the first place retain and reimburse to and for himself and themselves, the costs, charges, and expenses, of and attending the execution of the trusts hereby reposed in him and them; and in the next place pay and satisfy to *the said [*grantee*], his executors, administrators, or assigns, all the arrears of the said annuity, or clear yearly

lowing trusts, &c. viz. Upon trust, after annuity shall be in arrear 40 days, out of the rents and profits of rectory, glebe lands, tithes, &c, or by mortgage or sale thereof, or by bringing actions against tenants, &c. to raise arrears of annuity, and all costs.

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[*272]

[*273]

Upon trust in the first place to retain the costs of executing the trusts;

and in the next place, to pay grantee arrears

[*274]

GRANT AND DEMISE OF BENEFICE.

of annuity and all his costs, &c.

sum of —— pounds; and all costs, charges, damages, and expenses, which he and they shall have incurred, suffered, borne, sustained, and laid out, by reason or on account of the non-payment of the said annuity, or clear yearly sum of —— pounds, or any part thereof, or in or about recovering and enforcing the payment of the same. AND UPON THIS FURTHER TRUST, that in the mean time, and until the said annuity, *or clear yearly sum of —— pounds or some quarterly payment thereof, shall be in arrear or unpaid, in the whole or in part, for the space of forty days next after the times hereby appointed for payment of the same; And also from time to time, when, and as often as all arrears of the said annuity, or clear yearly sum of —— pounds, and the said costs, charges, damages, and expenses, shall be raised or fully satisfied and paid, the said [*trustee*], his executors, administrators, and assigns, do and shall permit and suffer the said [*grantor*] and his *assigns, to receive and take the rents, issues, and profits of the said rectory (*or* vicarage, *or* perpetual curacy,) messuages or tenements, glebe lands, tithes, tenths, emoluments, and premises hereby granted and demised, or otherwise assured, or intended so to be, to and for his and their own use and benefit. AND UPON THIS FURTHER TRUST, that the said [*trustee*], his executors, administrators, and assigns, do and shall from time to time, after paying the said annuity, or clear yearly sum of —— pounds, when and as the same shall become due and *payable, and also after paying, deducting, and retaining such costs, charges, damages, and expenses as aforesaid, pay to the said [*grantor*] and his assigns, or to whom he or they shall direct or appoint, the money, (if any,) which, from time to time, shall remain in the hands of the said [*trustee*], his executors, administrators, or assigns, unapplied to any of the purposes aforesaid: AND *it is hereby provided, declared, and agreed* by and between the said [*grantor*] and [*grantee*], and the said [*grantor*] and [*grantee*] do hereby severally direct and appoint, that *all such covenants, contracts, agreements, assignments, assurances, deeds, acts, matters, and things, as shall be entered into, executed, had, made, or done by the said [*trustee*], his executors, administrators, or assigns, by

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And upon trust, until annuity be in arrear forty days, and when all arrears and all costs, &c. shall be raised or paid, to permit grantor to receive the rents and profits of rectory, glebe lands, tithes, &c.

[*276]

And upon trust to pay surplus money in trustee's hands to grantor.

[*277]

Trustee's assignments, &c. to be valid, whether grantor shall or shall not assent thereto.

[*278]

GRANT AND DEMISE OF BENEFICE.

virtue of these presents, shall and may be entered into, executed, had, made, or done, either with or without the concurrence of the said [*grantor*] or his assigns; and shall, whether the said [*grantor*] or his assigns shall or shall not join therein, or assent thereto, be to all intents, effects, constructions, and purposes whatsoever, com- *pletely valid and effectual, and bind him the said [*279] [*grantor*] and his assigns, and all persons claiming or to claim, by, from, under, or in trust for him, them, or any of them: And that the person or persons who shall pay to the said [*trustee*], his executors, administrators, or assigns, all or any part of the rents, issues, and profits of the said rectory (*or* vicarage, *or* perpetual curacy), messuages or tenements, glebe lands, tithes, tenths, emoluments and premises hereby demised, or otherwise assured, or intended so to be, or advance any money upon any *sale or sales, or upon the security of any mortgage or [*280] mortgages of the same hereditaments and premises, or any part thereof, or otherwise, pursuant to the trusts hereinbefore contained, shall not be obliged or required to see to the application of the said rents, issues, profits, and money respectively, or any of them; nor to inquire or ascertain whether such sale or sales, mortgage or mortgages, is or are necessary for all or any of the purposes hereinbefore mentioned; nor be answerable or accountable for the misapplication or nonapplication of the same *rents, issues, profits, and money: And that all receipts [*281] which shall be given by the said [*trustee*], his executors, administrators, or assigns, for all or any part of the said rents, issues, profits and money respectively, shall be good and sufficient acquittances and discharges for the sum and sums of money, which by the said receipts, and every of them, shall be acknowledged or expressed to be, or to have been received: And that the said [*trustee*], his executors, administrators, or assigns, shall not be answerable or accountable for any involuntary loss or damage *which may happen in the execution of the trusts hereby [*282] reposed in him and them: And [that in case at any time there should be two or more trustees or receivers for the purposes herein mentioned, one of them shall not be answerable or accountable for the acts, deeds, or defaults

Indemnity to persons paying money to trustee.

Trustee's receipts to be sufficient discharges.

Trustee not to be answerable for involuntary loss.

GRANT AND DEMISE OF BENEFICE.

of the other or others of them: AND THE SAID(*o*) [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, some or one of them, shall and will from time to time, during the said term of ninety-nine years determinable as aforesaid, well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or clear yearly sum of —— pounds, and also such proportional part thereof as aforesaid, free and clear of and from all taxes, charges, rates, and other deductions whatsoever, parliamentary, or otherwise, at the days and times, and in manner and form hereinbefore expressed, limited, and appointed for payment thereof, and according to the true intent and meaning of these presents. AND ALSO that he the said *[*grantor*], now, at the time of the sealing and delivery of these presents, hath in himself good right(*p*), full power,

Covenant by grantor for paying annuity for ninety-nine years, if he should so long live:

that he has right to charge rectory, glebe lands, tithes, &c. therewith;

[*283]

SURETIES.

(*o*) If there be a surety, or sureties, see form of the covenant, *ante*, Vol. 1, p. 634; and in that case make another lien part for the subsequent covenants of the grantor, thus,

"AND THE SAID [*grantor*], doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantee*], his (*or if the purchase be made by a public company*, the said [*trustees*], their) executors, administrators, and assigns, that he the said [*grantor*] now, &c. has right to charge," &c. *ut supra.*

PURCHASE FOR A COMPANY.

Institution for six months, and induction, sufficient title to a benefice.

(*p*) If the parson has been, according to the canonical law, duly instituted to his benefice, for the period of six months, without any adverse claim having been made, that alone is sufficient evidence of his title, although he was presented by one who had no right to present; for, by the Statute of Westminster 2, 13 Edw. 1, c. 5; 2 Inst. 354, 355, 356, plenarty for six months bars the party who has right to present; but by the 7 Anne, c. 18, for that turn only; and even the crown also is bound after the parson's induction. Co. Litt. 344, a. & b.; 2 Inst. 358; F. N. B. 34, K.; *Hutton's case*, Hob. 15; 3 Bla. Com. 244, 249; 1 Burn's Eccles. Law, 171, 176, 6th ed. By induction the parson becomes seised of the temporalities of the church, so as to have

and lawful and absolute authority, to subject and charge the said rectory (*or* vicarage, *or* perpetual curacy), messuages or tenements, glebe lands, tithes, tenths, emoluments and premises hereby charged, or made chargeable with the said annuity, or clear yearly sum of —— pounds, with the appurtenances, during the said term of ninety-nine years, determinable as aforesaid, to and with the payment of the said annuity, or clear yearly sum of —— pounds, and the powers and remedies hereby given for compelling and enforcing the payment thereof; *And also* to demise the same hereditaments and premises, with the appurtenances, unto the said [*trustee*], his executors, administrators, and assigns, for the said term of ninety-nine years, determinable as aforesaid, upon the trusts and for the purposes aforesaid, and according to the true intent and meaning of these presents. AND ALSO that it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, from time to time, and at all times hereafter, to have, hold, receive, and take the said annuity, or clear yearly sum of —— pounds, and every part thereof, for and during the said term of ninety-nine years, determinable as aforesaid, from and out of the rents, issues, and profits of * the said hereditaments and premises hereby charged therewith as aforesaid; *And* that the same hereditaments and premises shall, from time to time during the said term of ninety-nine years, determinable as aforesaid, continue and be charged with and subject to the payment of the said annuity or clear yearly sum of —— pounds, and to the said powers and remedies by distress and entry for the recovery of the same, and for all costs, charges, and expenses to be occasioned by the nonpayment thereof; *And* that the same hereditaments and premises shall and may be held, possessed, occupied, and enjoyed by the said [*trustee*], his executors, administrators, and assigns, during the said term of ninety-nine years, deter-

GRANT AND DEMISE OF BENEFICE.

and to demise the same to trustee:

that grantee shall receive annuity out of the rents and profits;

[*284]

and that the hereditaments shall, during term, continue subject to payment of annuity, and all costs, &c.

for peaceable enjoyment;

power to grant them, or to sue for them. Gibson's Codex Juris Ecclesiastici Anglicani, 814, 2d ed. But if the parson has not been instituted so long, and also inducted, the title of the patron who presented ought to be shown.

GRANT AND DEMISE OF BENEFICE.

minable as aforesaid, upon the trusts, and in manner aforesaid, and according to the true intent and meaning of these presents; without any let, suit, trouble, denial, interruption, or disturbance whatsoever, of or by the said [*grantor*], or any other person or persons claiming or to claim, by, from or under him: AND that respectively free and clear, and freely, clearly, and absolutely acquitted, exonerated, and discharged, or by the said [*grantor*], well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all charges and incumbrances whatsoever, made, done, committed, or suffered by the said [*grantor*], or any person or persons claiming or to claim, by, from, under, or in trust for him. AND FURTHER, that he the said [*grantor*], shall not nor will, at any time or times hereafter, without the consent of the said [*grantee*], his executors, administrators, or assigns, in writing for that purpose first had and obtained, accept or take any other preferment in the church, or place, or employment whatsoever, in exchange for, or in lieu of the said rectory (*or* vicarage, *or* perpetual curacy) of ——; or by which the said rectory (*or* vicarage, *or* perpetual curacy) may be vacated; or do, or commit, or suffer any act, matter, or thing whatsoever, whereby or by means whereof, he the said [*grantor*] may be deprived of the said rectory, (*or* vicarage, *or* perpetual curacy), or the same may become vacant. AND that if the said [*grantor*] should at any time hereafter, with or without the consent of the said [*grantee*], his executors, administrators, or *assigns, given as aforesaid, accept and take any other preferment in the church, or place or employment whatsoever, in exchange for, or in lieu of the said rectory (*or* vicarage, *or* perpetual curacy) as aforesaid, or whereby the said rectory (*or* vicarage, *or* perpetual curacy) may be vacated as aforesaid, then, and in that case, such preferment, place, or employment, and the profits and emoluments thereof, shall be thenceforth charged with, and subject to the payment of the said annuity or clear yearly sum of —— pounds, and be subject and liable to the distress and entry of the said [*grantee*], his executors, administrators, and assigns, for enforcing the payment of the same, in the like manner as is herein-

free from incumbrances.

Not to vacate rectory without grantee's consent:

that future church preferment, or other employment, accepted in lieu of rectory, shall be subject to payment of annuity, and liable to distress and entry:

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GRANT AND DEMISE OF BENEFICE.

and that grantor will charge annuity upon such preferment or employment:

before provided with respect to the rectory (*or* vicarage, *or* perpetual curacy), hereditaments, and premises hereinbefore particularly mentioned and described. AND that he the said [*grantor*] shall and will, from time to time, at his own proper costs and charges, within two calendar months next after any such exchange or acceptance of any other ecclesiastical or other preferment, place, or employment of profit, on the request of the said [*grantee*], his executors, administrators, or assigns, charge the said annuity or clear yearly sum of —— pounds upon such preferment, and every or any place, employment, or income whatsoever, to be had or gotten by the said [*grantor*] in exchange for, or in lieu of the said rectory (*or* vicarage, *or* perpetual curacy), or whereby the same may become vacant, or otherwise, by such good and sufficient legal conveyances, and in such manner, as the counsel in the law of the said [*grantee*], his executors, administrators, or assigns, shall in that behalf advise or require. AND ALSO that in case the said annuity or clear yearly sum of —— pounds, or any part thereof, should happen to be behind or unpaid by the space of sixty days next over or after any of the said days or times whereon the same is hereinbefore appointed to be paid as aforesaid, and the said [*grantee*], his executors, administrators, or assigns, should deem it necessary to sequester (*q*) the said rectory (*or* vicarage, *or* perpetual

that in case annuity be in arrear sixty days, grantee may sequester the rectory, or any future church preferment;

(*q*) Where a judgment has been obtained against a clergyman, and upon a *fieri facias* directed to the sheriff to levy the sum recovered, he returns *nulla bona*, and that the defendant is a beneficed clerk having no lay fee, there goes a *fieri* or *levari facias* to the bishop of the diocese wherein the benefice is, commanding him to make or levy the sum recovered of the *ecclesiastical* goods and chattels of the defendant. Tidd's Prac. 1039, 7th ed.; 3 Bla. Com. 418; Gilb. Exec. 26; 2 Bac. Abr. 360, fol. ed. 727, Gwill. ed. *Execution*, (E) 6.; F. N. B. 236, A.; 2 Inst. 4, 472, (10); Jenk. Cent. 207; 3 Bos. & Pul. 327; [*Bennett* v. *Apperley*, 6 Barn. & Cress. 630.] Or, instead of a *fieri* or *levari facias* *de bonis ecclesiasticis*, a *sequestrari facias* may be issued. [See *Cuddington* v. *Wilby*, 2 Swanst. 174.] The writ of *fieri* or *levari facias* is similar to a commou *fieri facias;* and the bishop, who is in the nature of a temporal officer or ecclesiastical sheriff, may seize and sell the

On the sheriff returning *nulla bona*, &c. a *fieri* or *levari facias de bonis ecclesiasticis* issues to the bishop:

or *sequestrari facias* may be issued.

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*curacy), or any future church preferment of the said [*grantor*], then, and in that case, it shall and may be

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Return.

profits of the benefice. *Walwyn* v. *Awberry*, 1 Mod. 260; 2 Mod. 257, 258; 1 Frem. 230. S. C. But he must return *fieri* or *levari feci*, and not *sequestrari feci*, upon this writ. *Ibid.* He, or in case of his death his executors, may also, like the sheriff, be called on by rule to return the writ; *Lanquit* v. *Jones*, 1 Str. 87; and if he makes a false return, will be liable to an action. *Pickard* v. *Paiton*, 1 Sid. 276; Gilb. Exec. 26; and see *Moseley* v. *Warburton*, 1 Salk. 320; 1 Lord Raym. 265, S. C.

Sequestration follows;

Upon this writ the bishop or his officer, 1 Cromp. Prac. 351, 3rd ed., makes out a *sequestration*, directed to the churchwardens, Watson's Clergyman's Law, 308, 4th ed. ch. 30, or whoever else the bishop thinks fit; or, upon proper security, to persons of the plaintiff's own appointment, 3 Burn's Eccles. Law, 340, 6th ed. *Sequestration*, 5, requiring them to sequester the tithes and other profits of the benefice, and pay them to the plaintiff, till the full sum be raised. 3 Bla. Com. 418.

which should be published

Which sequestration should be forthwith duly published, by reading it in church during divine service, and afterwards at the church door, and fixing a copy thereon; for where a sequestration was made out, and not

before return of writ,

published while the writ was in force, but was stayed in the registrar's hands, by desire of the plaintiff's attorney, the court held that it had no

otherwise it loses priority.

priority as against other sequestrations afterwards made out and duly published; but that, if it had been published, the execution would have taken effect, and must have been first satisfied, notwithstanding it was then returnable. *Legassicke* v. *Bishop of Exeter*, E. 22 Geo. 3: 1

Continuing execution.

Cromp. Prac. 351, 352, 3rd ed. The writ of *fieri* or *levari facias de bonis ecclesiasticis* is a continuing execution until the sum indorsed be satisfied; 2 H. Bl. 583, n.; Tidd's Prac. 1040, 7th ed.; (but see Wood's Inst. 604, 605, 10th ed.; 1 Cromp. Prac. 3rd ed. 337, where it is said the writ must be renewed every term;) and if the sequestration issue and be published before the writ is returnable, it is sufficient; and the plaintiff is entitled to the growing profits from time to time, though long after it is returnable, until he is satisfied the sum indorsed on the writ. 3 Burn's Eccles. Law, 340, 6th edit. *Sequestration*, 5; *Marsh* v. *Fawcett*, 2 H. Bl. 582. Yet, if it be actually returned, the authority of the bishop is at an end. Therefore, where such a writ remained in the hands of the bishop long after it was returnable, who sequestered the profits of the vicarage accruing as well before the return day as after, and being ruled to return the writ, returned only the amount of the sum levied up to the return day, the Court of Common Pleas would not order the writ and return to be taken off the file, but would only permit the return to be amended by inserting the sum levied

lawful to and for the said [*grantee*], his executors, administrators, and assigns, and the said [*grantor*] doth

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authority for that purpose;

up to the time when the writ was actually returned. *Marsh* v. *Faxcett*, 2 H. Bl. 582. The court said the proper way would have been, to have ruled the bishop from time to time, to know what he levied. *Id.* 583.

The profits are applied according to the discretion of the ordinary, who allows for the trouble in gathering the tithes, for the supply of the cure, and for the maintenance of the parson and his family.

After the sequestrators have performed the duty required, the sequestration is taken off and application of the profits is made according to the direction of the ordinary. He allows to the sequestrators a reasonable sum out of the profits, according to the trouble they have had in gathering the tithes. And he also allows for the supply of the cure what is convenient, relation being had to the charge and to the profits; and likewise for the maintenance of the incumbent and of his family, if he has not otherwise sufficient to maintain them. 3 Burn's Eccles. Law, 341, 6th ed. *Sequestration*, 8. So far the principles of policy established by the law extend, but no further.

Defeazance to warrant of attorney for securing an annuity from a clergyman, should authorize execution for the whole penalty.

When a warrant of attorney is given to secure an annuity from a clergyman, the defeazance should authorize the levying of the whole sum for which the judgment is confessed; [see *Gowlett* v. *Hanforth*, 2 Wm. Bla. 958;] and after payment of the arrears and all costs, to invest the residue in the stocks, in trust to secure the future payments: subject nevertheless to the grantor's right of re-purchasing the annuity, and consequently in that event, of a transfer of the stocks to him.† For it does not appear to be settled, whether the plaintiff can, after the sum indorsed on the writ is levied, preserve his priority with regard to the future arrears of an annuity, over another judgment creditor, who has delivered another writ to the bishop, in the interval after the sum indorsed on the former writ was levied, and before the time of the next periodical payment arrives. The equitable interposition of the court seems hitherto to have extended no farther, in cases of judgments entered on bonds to secure annuities, than to permit the judgment to stand as security for the future payments, and fresh executions to be taken out as those payments became due. *Howell* v. *Hanforth*, 2 Wm. Bla. 143, 1016. *Murray* v. *Harding*, Ibid. 866. *Ogilvie* v. *Foley*, Ibid. 1111. *Scott* v. *Whalley*, 1 Hen. Bla. 297. *Ibid.* n. 583.

Qu. whether the plaintiff, after the sum indorsed is levied shall have priority as to accruing payments against subsequent judgment creditors.

Judgments stand as a security for future payments, but fresh executions must be taken out.

[In the case of *Cuddington* v. *Withy*, 2 Swanst. 174, an annuity creditor in possession of a rectory under a sequestration, was decreed to account to a creditor who had subsequently obtained judgment and issued sequestration for the surplus of the profits after discharging the arrears due and costs; and the allegation that there existed prior incumbrances was held to be no defence, such incumbrancers not having obtained execution; and it is no answer to a claim for tithes to allege

† See the form, *post*, 354.

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hereby fully and irrevocably authorize and empower the said [*grantee*], his executors, administrators, and assigns, to sequester the said rectory (*or* vicarage, *or* perpetual curacy), or any such future church preferment; and particularly to instruct counsel, or civilians, to act for the said [*grantee*], his executors, administrators, or assigns, and for him the said [*grantor*], and in his name, either in courts of common law, civil law, or equity, or elsewhere, as occasion shall require, to assent to and concur in all such proceedings as may be necessary to obtain an

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that the legal estate in the rectory is in trustees for securing an annuity, if they have not attempted to interfere with the possession. *Glegg* v. *Legh*, 1 Dow. New. Ser. 98.]

The Court will appoint a receiver at the instance of a creditor who has issued sequestration, but who is prevented by an outstanding legal estate from recovering the profits at law. *Silver* v. *Bishop of Norwich*, 3 Swanst. 112, n. *White* v. *Bishop of Peterborough*, Ib. 109. And "the Court will not allow a prior incumbrancer to object to the Court's appointing a receiver by any thing short of a personal assertion of his legal right or a taking possession himself." Per Lord Eldon, 1 Swanst. 114. See same principle as to mortgagees stated *post*, Vol. 5, p. 433.]

The plaintiff cannot sue execution on annuity bond, without assigning breaches;

but he may on a warrant of attorney.

Although the last cited cases are to the contrary, yet it is now settled that the plaintiff cannot take out execution on a bond for securing an annuity, without assigning breaches on the record, under the stat. 8 & 9 W. 3, c. 11, s. 3. *Collins* v. *Collins*, 2 Burr. 820. *Roles* v. *Rosewell*, 5 Durnf. & East, 538. *Hardy* v. *Bern*, Ibid. 540, 636. *Walcot* v. *Goulding*, 8 Durnf. & East, 126. But where judgment is entered on a warrant of attorney for securing an annuity, whether it be or be not collaterally secured by bond, it is not necessary, under 8 & 9 W. 3, to assign breaches: *Austerbury* v. *Morgan*, 2 Taunt. 195. *Kinnersley* v. *Mussen*, 5 Taunt. 264; nor where the warrant of attorney is conditioned for payment of money by instalments, *Cox* v. *Rodbard*, 3 Taunt. 75; a warrant of attorney not being within that statute. Before it was decided to be necessary to assign breaches, the plaintiff by mistake levied the whole penalty of the bond; but the court made a rule upon him to refund the overplus beyond what would satisfy the arrears of the annuity. *Murray* v. *Harding*, 2 Wm. Bla. 866. *Ogilvie* v. *Foley*, Ibid. 1111. And if judgment be entered up for the penalty of a bond given to secure an annuity, and the defendant be taken in execution thereon, when the warrant of attorney under which such judgment was entered up only authorizes the taking out execution for the *arrears*, the court will set aside the execution *in toto*, and not merely charge the defendant *pro tanto*. *Tilby* v. *Best*, 16 East, 163.

If the warrant of attorney authorize execution for the arrears only, it cannot be taken out for the whole penalty.

immediate sequestration of the said rectory (*or* vicarage, *or* perpetual curacy), or such future church preferment; and that without giving notice to, or advising or consulting with, the said [*grantor*] thereupon, notwithstanding any *rules or orders of such courts of law or equity to the contrary: the said [*grantor*] hereby renouncing on his part all benefit and advantage of such rules or orders of the said courts of law or equity, and confirming all and whatsoever the said [*grantee*], his executors, administrators, or assigns, shall do or cause to be done in the premises. AND FURTHER, that he the said [*grantor*] shall not nor will, at any time hereafter, without the consent in writing of the said [*grantee*], his executors, administrators, or assigns, or the order or decree of some court of law or equity, alter, revoke, or annul all or any of the powers or authorities hereinbefore contained and given to the said [*trustee*] and [*grantee*] respectively, and to their respective executors, administrators, and assigns. AND MOREOVER, that he the said [*grantor*], and all and every other person and persons whosoever, lawfully claiming, or to claim, by, from, under, or in trust for him, shall and will at any time or times, and at all times hereafter, upon *every reasonable request of the said [*grantee*], his executors, administrators, or assigns, but at the proper costs and charges of the said [*grantor*], make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, and assurances in the law whatsoever, not only for further, better, more perfectly, lawfully, and absolutely or satisfactorily charging, granting, and assuring the said annuity, or clear yearly sum of —— pounds, hereby granted, or intended so to be, with such powers and remedies as aforesaid, upon, from, and out of the hereditaments and premises hereby charged therewith, or intended so to be, but also for charging, granting, and assuring the same annuity or clear yearly sum, upon, from, and out of such other preferment in the church, place, or employment whatsoever as aforesaid, unto the said [*grantee*], his executors, administrators, and assigns, in manner aforesaid; *And* not only for further, better,

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not to revoke powers given to trustee and grantee respectively:

for further assurance as to hereditaments hereby charged and demised, and future preferment and employment:

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*more perfectly, lawfully, and absolutely and satisfactorily demising, or otherwise assuring the hereditaments and premises hereby granted and demised, or otherwise assured, or intended so to be; but also for demising or otherwise assuring such other preferment in the church,
[*290] *or place, or employment whatsoever as aforesaid, and every part of the same respectively, with their appurtenances, unto the said [*trustee*], his executors, administrators, and assigns, or unto such other person or persons as the said [*grantee*], his executors, administrators, or assigns, shall direct or appoint, for all the then residue of the said term of ninety-nine years, determinable as aforesaid, upon the trusts, and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, and agreements, herein mentioned and declared, and according to the true intent and meaning of these presents; *As* by the said [*grantee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, or advised, and required and be tendered to be made, done, and executed. (*Add covenant to appear at insurance office, and to pay additional premiums,* ut ante, *p.* 134, *and proviso as to judgment, with power to levy for the arrears only,* ut ante, p. 41; *or if it be the agreement, power to levy the whole penalty, and after payment of the arrears, to invest the residue in the stocks, in trust to secure the future payments,* ut post, DEFEAZANCE TO WARRANT OF ATTORNEY, *post,* 354 (*k*); *power to the* grantor or his assigns (*r*) *to re-purchase,* ut ante, p. 42, &c. *and power to appoint a new trustee,* ut ante, p. 44, mutatis mutandis.] IN WITNESS, &c.

SECURITIES.

(*r*) If there be one surety, add, power to re-purchase, *ut ante,* vol 1, p. 482; if two, p. 513, or 636; with declaration, that if re-purchase be made by sureties, annuity shall continue for their benefit; "*subject* to the like right of the said [*grantor*], to re-purchase the same," *ut ante,* pp. 514, 483.

The Note referred to on Assignments of Officers' Pay, Pensions, &c.

ON ASSIGNMENTS OF OFFICERS' PAY, &c.

Assignments either of the half or whole pay of a military officer, or of seamen's wages, are void.

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The decision in *Flarty* v. *Odlum*, 3 Durnf. & East, 681, mentioned *ante*, p. 266, was on an Insolvent Debtors' Act. Lord Kenyon, in deliver-*ing his judgment, said, "I am clearly of opinion that this half-pay could not be legally assigned by the defendant, and consequently that the creditors are not entitled to an assignment of it for their benefit. Emoluments of this sort are granted for the dignity of the state, and for the decent support of those persons who are engaged in the service of it. It would, therefore, be highly impolitic to permit them to be assigned; for persons, who are liable to be called out in the service of their country, ought not to be taken from a state of poverty. Besides, an officer has no certain interest in his half-pay; for the king may, at any time, strike him off the list. Indeed assignments of half-pay have been frequently made in fact, but they cannot be supported in law. It might as well be contended that the salaries of the judges, which are granted to support the dignity of the state and the administration of justice, may be assigned." In the case of Capt. Kennedy, a bankrupt, the same point was determined by the Lord Chancellor, about a year and a half before. 3 Durnf. & East, 683. In *Lidderdale* v. *The Duke of Montrose*, 4 Durnf. & East, 248, it was held, on principles of public policy as well as on account of the interest of the officers themselves, that by law an assignment of the future half-pay of a military officer was void. That the half-pay of officers was not only a *chose in action;* but that with respect to such payments as were not due, it was also contingent whether or not they would ever be made. And in *Stone* v. *Lidderdale*, 2 Anstr. 533, [see also 3 Bos. & Pull. 328,] it was held, that an assignment of the half-pay of an officer in the army is bad in equity, as well as at law; half-pay being intended by the state to provide decent maintenance for experienced officers, both as a reward for their past services, and to enable them to preserve such a situation that they may always be ready to return into actual service. It is incidental to the cause for which it was granted, *Oliver* v. *Emsonne*, Dyer, 1. b, and cannot be separated from it. 2 Anstr. 541, 542. Nor can the full-pay of a military officer be assigned; it being contrary to the policy of the law, that a stipend given to one man for future services, should be transferred to another who cannot perform them. *Barwick* v. *Read*, 1 Hen. Bl. 627. [See also 6 J. B. Moore, 42.] And by the stat. 1 Geo. 2, s. 2, c. 14, s. 7, all assignments of seamen's wages are void. But it seems that the assignee may maintain an action against the assignor on his covenant. 4 Durnf. & East, 251. And Mr. Justice Buller thought, that *pay actually due* might be assigned, as well as any other existing debt, but not future accruing payments. 3 Durnf. & East, 683. However, as to officers who take the benefit of the Insolvent Debtor's Act, the legislature, in rejecting

But, it seems, an action of covenant lies against the assignor.

Pay actually due may, it seems, be assigned.

ON ASSIGNMENTS OF OFFICERS' PAY, &c.

the *above doctrines, have shown that their opinion of the principles of public policy differs from the opinion held by the judges. For, by the stat. [7 Geo. 4, c. 57, s. 29, after providing "that nothing in this act contained shall extend to entitle the assignee or assignees of the estate and effects of any prisoner being or having been an officer of the army or navy, or an officer or clerk, or otherwise employed or engaged in the service of his Majesty in the customs or excise, or any civil office or other department whatsoever, or being or having been in the naval or military service of the East India Company, or an officer or clerk, or otherwise employed or engaged in the service of the court of directors of the said company, or being otherwise in the enjoyment of any pension whatever, under any department of his Majesty's government, or from the said court of directors, to the pay, half-pay, salary, emoluments, or pension of any such prisoner, for the purposes of this act; it is declared, that it shall be lawful for the said court to order such portion of the pay, half-pay, salary, emoluments, or pension of any such prisoner, as, on communication from the said court to the secretary at war, or the lord's commissioners of the admiralty, or the commissioners of the customs or excise, or the chief officer of the department to which such prisoner may belong or have belonged, under which such pay, half-pay, salary, emoluments, or pension, may be enjoyed by such prisoner, or the said court of directors, he or they may respectively, under his or their hands, or under the hand of his or their chief secretary, or other chief officer for the time being, consent to in writing, to be paid to such assignee or assignees, in order that the same may be applied in payment of the debts of such prisoner. And such order and consent being lodged in the office of the paymaster of his Majesty's forces or of the treasurer of the navy, or of the secretary of the said court of directors, or of any other officer or person appointed to pay, or paying, any such pay, half-pay, salary, emoluments, or pension; such portion of the said pay, half-pay, salary, emoluments, or pension, as shall be specified in such order and consent, shall be paid to the said assignee or assignees, until the said court shall make order to the contrary."]

Portion of pay of officers, insolvent debtors, may be obtained by application.

A pension for past services may be assigned;

Although a pension is equally as uncertain as half-pay, yet as no future benefit is meant to arise to the state from granting it, a material distinction arises between them. 2 Anstr. 541. A pension for past services may, therefore, be assigned;† and when assigned, it is not a *chose in action*, but a grant. *M'Carthy* v. *Goold*, 1 Ball & Beatty, 389.

but a pension for supporting the grantee in the performance of future duties, is unalienable.

But a pension granted by act of parliament "for the more honourable support of the dignities" of a dukedom, payable out of the revenues of the Post Office, to such persons severally and successively, to whom the same should come by virtue of the act, with a proviso that the ac-

[† See *Davis* v. *Duke of Marlborough*, 1 Swanst. 79.]

quittance of every such person should be a sufficient discharge, is unalienable by the person in possession as against himself, and cannot be charged. *Davis* v. *The Duke of Marlborough*, Swanst. 74, 79; 2 Wils. Chan. Rep. 130, *S. C.* ON ASSIGNMENTS OF OFFICERS' PAY, &c.

[There are two species of annuities granted by the crown in consideration of services, the one is absolute for the life of the grantee, or any other specific period, and the other is during the royal pleasure only; the former is unaffected by the demise of the crown; the latter expires on that event, but is commonly renewed by the succeeding monarch. As to pensions from the crown.

In the late case of *Clay* v. *St. John*, 2 Sim. & Stu. it was held that a person who purchased an annual pension of the latter description, which ceased on the demise of his late Majesty, was not entitled to an annuity of a similar amount granted by his present Majesty, though the warrant recited the former grant, and the cessation of the pension as the ground of the grant, the contract being confined to the existing and not extending to a future pension. But even where the grant is not expressly during pleasure, the crown may revoke its grant, and this is sometimes done when the grantee becomes a public defaulter. In the late case of *Priddy* v. *Rose*, 3 Mer. 86, *H.* had a grant of a yearly pension of 500*l.* under the king's sign manual, in consideration of services, (payable out of a certain fund,) during his life, and by a warrant signed by the commissioners of the treasury, directed to the treasurer of the navy, he (the treasurer) was ordered to pay to *H.* or his assigns, the said pension during his life; *H.* subsequently assigned the pension upon trust for securing several annuities; he afterwards absconded, being largely indebted to the crown as a public officer, and by an order in council his pension was withdrawn and the arrears thereof remaining unpaid were declared to be applicable to the liquidation of this debt. The annuitants filed a bill for an injunction to restrain the treasurer of the navy from parting with the monies in his hands, which was resisted on the part of the officers of the crown on three grounds; first, that the court had no jurisdiction; secondly, that the pension was not in its nature assignable; and thirdly, that even supposing the assignment otherwise valid, the crown had a right to retain the arrears against the assignees. On the first of these grounds, Sir William Grant, M. R. dismissed the bill, observing, that "where a public officer has in his hands money issued by the government for the use of an individual, it is clear that a suit may be maintained against the officer for the recovery of such money, for it is his duty towards the crown, as well as towards the individual, to apply the money to its destined purpose;" and his honour referred to *Rose* v. *Dawson*, 1 Ves. sen. 331, as a case of this kind; "but," continued the learned judge, "here the officer is commanded by government to withhold the money from *H.* and to apply it towards Purchaser not entitled to renewed pension.

When grantee of pension becomes a defaulter, the crown may direct arrears to be applied in liquidation.

ON ASSIGNMENTS OF OFFICERS' PAY, &c.

satisfaction of a debt which *H.* owes the public. Then the question is between government and *H.* or *H.*'s assignees, and it is not I apprehend in this court that such a question can be decided; besides, if the assignment, as is contended, pass not merely the equitable but the legal title to the pension, why does the assignee come into a court of equity? If on the other hand he is only an equitable assignee, and as such stands precisely in *H.*'s place, he would probably find it difficult in *any* court to maintain that the pension can be claimed from government while the debt to government remains unsatisfied."

Stat. 5 & 6 Edw. 6, c. 16.

By stat. 5 & 6 Edw. 6, c. 16, it is enacted, that "if any person bargain or sell any office, or deputation of any office, or any part of them, or receive or take any money or other profit, or take any promise, agreement, covenant, bond, or assurance, or receive or have any money or profit for any office, or deputation, or any part of them, or to the intent that any person should have any office, or deputation, or any part of them, which office shall in anywise touch or concern the administration or execution of justice, or the receipt of any of the king's revenue, or which shall concern any clerkship in any court of record wherein justice is to be ministered; every such person that shall bargain or sell any of the said offices or deputations, or that shall take any money, profit, &c. shall not only lose all his right and estate in the office, or the gift or nomination of the office, but also such person that shall give any money, or make any promise or assurance for the offices, &c. shall be adjudged a disabled person to have and enjoy the said office," &c. And by the third section it is further enacted, that "all such bargains, agreements, and assurances shall be void." This act is greatly extended by stat. 49 Geo. 3, c. 126.

Sale of offices concerning the administration of justice, &c. void.

Profits of clerk of the peace not assignable.

It has been held, that the office of clerk of the peace is an office within the meaning of this statute; and the circumstance that the assignment was of the profits, after deducting the salary of the deputy and the expenses attending the execution of the office, did not support it. *Palmer* v. *Bate*, 6 J. B. Moore, 28. But the profits of the office of private secretary are of course assignable; and a covenant to resign the emoluments of all offices of which the covenantor might become possessed, would clearly be good as to assignable offices. *Harrington* v. *Klosprogge*, 6 J. B. Moore, 38 n.

Contra, as to registrar of the Court of Chancery.

It seems that the profits of the office of registrar of the Court of Chancery are assignable. *Drummond* v. Duke of *St. Albans*, 5 Ves. 433. So in an unreported case in the Exchequer, (with the particulars of which the Editor has been obligingly furnished by Mr. Younge,) where the question was raised whether an assignment by the clerk of the de-

puty-registrar of the Prerogative Court, of the profits of his office, in trust to secure an annuity, was valid; the Court decided in the affirmative.

Unreported case of *Aston* v. *Gwinell.*

The Lord Chief Baron (Alexander), in addressing himself to this part of the case, observed: "The object of the statute of the 5th of Edw. 6. was, to prohibit corrupt contracts, by which a right to an office or a right to exercise any of its duties might be obtained, with a view to secure that persons worthy of such trusts might be advanced to them. This contract seems to me to have no relation to that subject. Forgetting, for the moment, that this is a mere clerkship, held during the pleasure of the chief officer, I cannot avoid recollecting that the appointment, or any influence used or to be used for the purpose of obtaining it, is quite remote from this transaction. I cannot, therefore, apply any argument drawn from that statute to the point under my consideration.

Assignment of profits of clerk to deputy registrar of the Prerogative Court valid.

Another class of cases has been, with more plausibility, applied to this controversy, I allude to that class which is founded on principles of state policy, and which protects the servants of the public from their own improvidence, and secures to them, in defiance of their own acts, the possession of those resources derived from the public, and intended to enable them to perform their public functions. The pay of naval and military officers, and the incapacity to assign it, either at law or in equity, after some hesitation at last established, affords the most distinct and intelligible instances of the application of this rule. The office, or rather the profits of the office, of clerk of the peace, seems another instance of the same character. But I am not able to apply that principle to the situation of the defendant. His situation is called an office, but its nature is not very distinctly explained. This, however, is represented, that he is a mere clerk assisting the deputy-registrars; receiving emoluments for business done at the pleasure of his superiors. It does not appear to me that he can be considered as an officer of the court; and as to his connexion with the actual execution of any functions in the Prerogative Court, it is null: it is confined to receiving during the pleasure of his superiors, certain sums earned by the labours of another person permitted actually to perform them against him."

In this case several other objections were taken to the annuity on points which have already been discussed in an anterior part of the present work. The first was, that the memorial was defective, inasmuch as it did not show that the deed contained, in addition to the grant of the annuity, a charge of other annuities on the same property. In conformity with the decisions respecting the description in the memorial of the "nature of the instrument" referred to, (*ante*, Vol. 1, p. 335 *a.*) it was determined that this objection was untenable. It was also contended, that part of the consideration money had been returned or

ON ASSIGNMENTS OF OFFICERS' PAY, &c.

Payment of consideration money for an annuity to a trustee to pay costs and debts of the grantor, held to be good.

retained, and the facts on which this allegation was founded, as detailed by the Lord Chief Baron, were as follow :—

" It was part of the contract that the grantor should pay out of the consideration money the expense of the deeds, that the money should be paid to a trustee, and that he should apply it first to the payment of these costs, then of other debts due from the grantor, and if there should be any surplus, to pay the surplus to him. The transaction was executed according to these stipulations. There seems to be no ground for calling this either a retainer or a return of part of the consideration money." His lordship, after adverting to the cases of *Monys* v. *Leake*, *ante*, Vol. 1, p. 335 *n*, and *Hurd* v. *Girdlestone*, *ante*, Vol. 1, p. 335 *o*, observed, " I can see no objection to the principle of these cases; if it be lawful to stipulate for the payment by the grantor of these costs, it seems reasonable enough that the transaction should not be avoided by the execution of this stipulation in the manner mentioned in those cases. This is a more favourable case ; the consideration here was paid to a third party as a trustee for the grantor, and by him was applied in satisfaction of the bill. It is true, this third person was the partner of the grantee, and interested in the bill; but it is difficult to see that it can be either a return or a retainer when it is a transaction with a third party, when the purpose is just and lawful, and would not have been so with the grantee himself or his attorney representing him." *Aston* v. *Gwinell*, Exchequer, 29 Jan. 1829. MS.

[This branch of the case has been stated, because it affords a confirmation of the view that has been taken, *ante*, Vol. 1, p. 335, *n*, of a point of great practical importance as it regards annuity transactions. It also shows the validity of the trust for the appropriation of the purchase money, suggested *ante*, pp. 27, 44.]

* GRANT *at* Common Law *of an* ANNUITY *for Ninety-nine Years, if the* Grantor *or* Nominees *should so long live, or for the* Life *of the* Grantee ; *with Powers of* DISTRESS *and* ENTRY ; *and* RELEASE *in* Fee, *of an Estate in* possession *or* remainder: *Or* RELEASE *in Fee,* To the use *that the Grantee may receive the Annuity: with Powers of* DISTRESS *and* ENTRY *by way of use:* TRUSTS FOR SALE, &c. *and Covenant to* SURRENDER COPYHOLDS, by reference to previous Precedents: POWER TO CUT TIMBER: DECLARATION *that the Judgment shall affect only the Estates charged with the Annuity, and the Person of the Grantor: and* APPOINTMENT OF RECEIVER *by the same Deed;* or COVENANT *by prior Mortgagees, not to lend any further Sums without Grantee's consent; and* COVENANT *by the first Mortgagee, for production of Title Deeds.*

GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

THIS INDENTURE, made, &c. BETWEEN [*grantor*], of, &c. of the first part; [*grantee*], of, &c. of the second part; [*trustee*], of, &c. of the third part; and [*receiver*], of, &c. of the fourth part. WHEREAS, &c.(*a*) (*Recite*

Parties.

Recital of seisin.

(*a*) If the estate be previously mortgaged, &c. and it be the agreement that the mortgagees shall not lend any further sums without the grantee's consent, make the first mortgagee a party of the second part, the second mortgagee of the third part, &c. and shortly recite the several mortgages at the commencement of the deed ; and add,

PRIOR MORTGAGEES PARTIES.

"AND WHEREAS no further sum or sums is or are due from the said [*grantor*] to the said [*first mortgagee*], [*second mortgagee*], and [*third mortgagee*] respectively, or any or either of them, than the several sums hereinbefore respectively mentioned, and such interest thereon re-

Recital that no further sums are due on mortgages.

GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

Recital of contract for purchase, &c.

* *seisin in fee in possession*, ut ante, 166) (*b*). AND WHEREAS &c. (*recite seisin of copyholds*, ut ante, Vol. 1. p. 547: or *if they belong to the grantor's wife*, ut ante, p. 576.) AND WHEREAS the said [*grantee*], hath contracted and agreed with the said [*grantor*], for the absolute purchase of an annuity or yearly rent-charge of —— pounds, for and during the term of ninety-nine years, if the said [*grantor*] (*or* [*grantee*], *or* [*nominees*], of, &c. (any) or either of them) should so long live, at or for the price or sum of —— hundred pounds. WHEREAS, &c. (*recite bond, warrant of attorney, &c.* ut ante, pp. 108-9; *or if there be no bond*, ut ante, p. 151). NOW THIS INDENTURE WITNESSETH, &c. he

First Testatum.

Recital of seisin in fee, subject to prior mortgages,

and subject to a prior annuity.

spectively as aforesaid, and they have respectively agreed to enter into the covenants hereinafter contained. AND WHEREAS the said [*grantor*] is seised of or entitled to the inheritance in fee simple in possession, of and in the aforesaid messuages, tenements, lands, and premises, with the appurtenances; subject to the aforesaid charges by way of mortgage thereon; and also subject to and charged with an annuity or yearly rent-charge of —— hundred pounds, payable to [*mother*], of, &c. widow, the mother of the said [*grantor*]; and which said annuity or yearly rent-charge is secured by an indenture tripartite, bearing date the —— day of ——, 17—, and made between [*father*], of, &c. since deceased, the late father of the said [*grantor*], of the first part, the said [*mother*], now the widow of the said [*father*], (by her then name and description of [*maiden name*], of, &c.) of the second part, and [*trustee*], of, &c. of the third part."

FEE IN REMAINDER.

(*b*) If the grantor be seised in fee in remainder, instead of "possession," *ante*, p. 167, sixth line, say,

"remainder, expectant upon the determination of a previous estate therein for the life of [*tenant for life*], of," &c.

Or if it be the case, recite *ut ante*, pp. 91-2.

A demise for years, the best method of securing an annuity granted by tenant for life.

When the grantor is only seised for life, it is the usual, and for the reasons stated, Vol. 1, pp. 337, 537 (*d*), *ante*, p. 52, *post*, p. 311, the best method, to demise the premises for ninety-nine years, if he should so long live, either to a trustee, or to the grantee, upon trusts for securing the annuity. See a demise of a life estate in possession, *ante*, p. 15; in remainder, *ante*, p. 118; and *vide post*, p. 317.

GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

* the said [*grantor*] *hath* given, granted, bargained, sold, and confirmed, and by these presents *doth* give, grant, bargain, sell, and confirm unto the said [*grantee*], his executors, administrators, and assigns, ONE annuity, &c. (*determinable on grantor's death*, ante, pp. 11 and 110; *determinable on two nominee's death*, ante, p. 30; *three*, ante, p. 152; *for the grantee's life*, ante, p. 138.) AND the said [*grantor*] doth hereby grant to the said [*grantee*], his executors, administrators, and assigns, that, &c. (*add powers of distress and entry at common law* (*c*), *determinable on grantor's death*, ante, p. 13, *subject to a previous life estate*, ante, p. 112; *determinable on nominee's death*, ante, p. 153; *for the grantee's life*, ante, p. 139.) AND THIS INDENTURE FURTHER WITNESSETH, that, &c. (*add release in fee* (*d*) *from the grantor to the trustee*, ut ante, Vol. 1, p. 655-7. TO THE USE of the said [*trustee*], his heirs and assigns for ever; UPON THE TRUSTS, &c. (*add trusts*, ut ante, Vol. 1, p. 660.) AND the said [*grantor*] doth hereby for himself, his heirs, executors, and administrators (*e*), covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], or his heirs, shall or will, on the request of the said [*grantee*], his executors, administrators, or assigns, but at the costs and charges of the said [*grantor*], his heirs or assigns (*add covenant to surrender copyholds to the trustee*, ut ante, 145) (*f*).

Grant of annuity.

Powers of distress and entry at common law.

Second Testatum.

Release in fee to trustee.

Covenant to surrender copyholds.

Covenant to pay annuity, and for title, &c.

(*c*) If the powers of distress and entry are intended to take effect by way of use, the conveyance must precede the powers, *ut ante*, Vol. 1, p. 657. The difference between a power of entry under the statute of uses, and a power of entry at common law, is stated, Vol. 1, pp. 626, 658.

Power of distress and entry by way of use.

REMAINDER IN FEE.

(*d*) If the conveyance be of a remainder in fee, *vide ante*, p. 95.

(*e*) If the copyhold lands belong to the grantor's wife, make her a party with him, and make additions to this covenant, and to the condition, *ut ante*, Vol. 1, pp. 577, 578. But if the surrender has been previously made, *vide* Vol. 1, p. 562.

Covenant to surrender wife's copyholds.

(*f*) If it be the agreement, add,

"PROVIDED ALWAYS, *and it is hereby further agreed and declared*, between and by the said [*grantor*] and the said [*grantee*]; and the said [*grantor*] doth hereby for himself, his heirs, executors, and administrators, covenant,

Power to cut timber.

GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

AND THE SAID *[*grantor*], for himself, &c. (*add covenant* promise, agree, and declare with and to the said [*trustee*], his (*or* and [*other trustee*], their) heirs and assigns, that if the said annuity or yearly rent-charge of —— pounds, so secured as aforesaid, or any part thereof, should at any time be in arrear or unpaid for the space of —— calendar months next after any of the quarterly days of payment hereinbefore mentioned, then and in every such case, it shall be lawful for the said [*trustee*] his (*or* and [*other trustee*], or the survivor of them, or the) heirs or assigns (of such survivor), at the request and by the direction of the said [*grantee*], his executors, administrators, or assigns, to fell and cut down, or cause to be felled or cut down, any of the timber which shall be for the time being standing in or upon the said estates hereby charged and released† as aforesaid, or any part thereof; and to sell

COPYHOLD.

† If the special custom of the manor warrant the felling of trees on the copyholds, add,

"and covenanted to be surrendered."

Under a special custom, a copyholder may cut down and sell trees.

It is a good custom, that a copyholder in fee may cut down trees and sell them at his pleasure. *Glasscock* v. *Peche*, 1 Roll. Abr. 560, pl. 16. *Rockey* v. *Huggins*, Cro. Car. 221. Jones, 245. 4 Leon. 239. Dal. 8. Noy, 2. S. C. So where by the custom of the manor a copyholder for life may name his successor, and so *in perpetuum*, such a copyholder for life may cut down and sell timber trees, for he is *quasi* a copyholder in fee. *Rowles* v. *Mason*, 1 Roll. Abr. 560, pl. 18. *Rowles* v. *Masters*, cited Cro. Car. 221. *Rolls* v. *Mason*, 1 Brownl. 132. 2 Brownl. 87, 192. Noy, 2. S. C. But if an ordinary copyholder for life cut down and sell trees, it is a forfeiture of his life estate; for a custom that a copyholder, not having any further interest than for life, may cut down and sell trees growing on his copyhold, has been adjudged void and unreasonable. *Rooke* v. *Huggins*, 1 Roll. Abr. 560, pl. 17. *Rocky* v. *Huggins*, Cro. Car. 221. *Powell* v. *Peacock*, Cro. Jac. 29. S. C. cited 2 Brownl. 89. 2 Noy. *Earl of Northumberland* v. *Wheeler*, 1 Buls. 158. 3 Buls. 81. So where a copyhold estate is granted to a man and his heirs for three lives, and he has no power of compelling the lord to renew on the falling in of the lives, the copyholder cannot cut timber growing on the estate. *Mardiner* v. *Elliot*, 2 Durnf. & East, 746. But where a copyholder of inheritance, having power by custom to cut

*for paying annuity, *for title, &c.* ut ante, p. 147, and

GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

and dispose of the same for such price or prices in money, and in such manner, as to the trustees or trustee for the time being shall appear expedient, and thereby to levy and raise so much money as shall be adequate to pay so much of the said annuity or yearly rent-charge of —— pounds, as shall be for the time being in arrear, and all costs, charges and expenses to be sustained and incurred by such trustees or trustee for the time being, in the exercise of this present power, or to be incurred by the said [*grantee*], his executors, administrators, or assigns, by reason or in consequence of such non-payment as last aforesaid. AND *it is hereby declared*, that the said [*trustee*] (and [*other trustee*]), or the trustees or trustee for the time being, exercising this present power, shall pay and apply the money so to be levied and raised as last aforesaid, in answering and satisfying the purposes for which the same is so authorized to be raised as aforesaid:

Money to be raised by selling timber to be applied in paying annuity and costs:

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timber, surrendered to the use of his will, and devised to *A.* for life, without impeachment of waste, with remainders over; and *A.* upon coming into possession cut down timber: though there was no instance, in fact, of a copyholder for life in the manor cutting timber, yet it was held that the right being annexed to the copyhold fee and inheritance, the copyholder in fee, in carving out his estate, may make a tenant for life dispunishable of waste; and that at any rate the lord cannot enter upon the estate of the copyholder for life as for a forfeiture upon his cutting timber; for the injury, if any, is not to the lord, but to the remainder-man of the copyhold inheritance. *Dann* d. *Joddrell* v. *Johnson*, 10 East, 266. See further as to the rights of lords of manors and copyhold tenants, in relation to timber, Gilb. Ten. 237, &c. Watk. ed. Fisher on Copyholds, 98, &c. 1st edit., 113, &c. 2d edit.; 1 Watk. Cop. [45], [332]; Scriven on Copyholds, 473, 2d edit.; *Grey* v. *Duke of Northumberland*, 17 Ves. 282; *Whitechurch* v. *Holworthy*, 19 Ves. 213; 4 Maule & Selw. 340, S C. [As to a mortgagee's right to cut timber, see *Withrington* v. *Banks*, Sel. Cas. Ch. 31; and his right to an injunction to restrain the mortgagor from cutting it, where the security is scanty, *Usborne* v. *Usborne*, 1 Dick. 75; *Farrant* v. *Lovel*, 3 Atk. 723; *Humphreys* v. *Harrison*, 2 Jac. & Walk. 381; and *vide post*, Vol. 6.]

GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

Vol. 1, p. 664; *proviso as to judgment* (*h*); *and power*

And shall pay any surplus which there may happen to be of such money, after answering and satisfying the purposes aforesaid, unto the said [*grantee*], his executors, administrators, or assigns."

and surplus to be paid to grantor.

and add after " aforesaid," Vol. 1, p. 664, fourth line,

" or of any timber or other trees to be sold in pursuance of the power hereinafter contained."

(*h*) If it be the agreement, add, after agreement that grantor will not take advantage of omission to revive judgment,

Declaration that judgment shall affect only the estates charged with annuity, and the grantor's person,

" PROVIDED ALWAYS, *and it is hereby expressly agreed and declared* between and by the said parties to these presents, and particularly (each of them) the said [*grantee*], (and [*other grantee*]), for himself, his heirs, executors, and administrators, (but so far only as relates to his and their own acts and deeds, and the acts and deeds of any person or persons acting under or on behalf of him or them) doth hereby covenant, promise, and agree with and to the said [*grantor*], his heirs, executors, administrators, and assigns, that no property, chattels, estate, or effects whatsoever or wheresoever, of or belonging to the said [*grantee*], his heirs, executors, or administrators, or wherein he the said [*grantee*] hath (*or* they the said [*grantees*] have) an interest, other than and except the hereditaments and premises hereinbefore mentioned to be hereby released, (and assigned respectively,) shall at any time or times hereafter be extended, taken in execution, or otherwise affected, under any execution or executions, to be issued or taken out upon or by virtue of the said judgment (*or* judgments, or either of them); it being the true intent and meaning of the parties to these presents, that the said hereditaments and premises hereinbefore mentioned to be hereby released (and assigned) as aforesaid, and the person of the said [*grantor*] shall alone be subject or liable to any execution or executions upon or by virtue of the said judgment (*or* judgments, or either of them)."

to repurchase.) (*i*) AND *WHEREAS (*k*) upon the treaty

GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

(*i*) If the premises be previously mortgaged, omit the appointment of a receiver; and if it be the agreement, say,

PRIOR MORTGAGEES PARTIES.

"AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the aforesaid agreement in this behalf, and in consideration of the premises, the said [*first mortgagee*], [*second mortgagee*], and [*third mortgagee*], for themselves severally and respectively, and for their respective heirs, executors, and administrators, do hereby severally and respectively covenant, promise, and agree, with and to the said [*grantee*], his executors, administrators, and assigns, that they the said [*mortgagees*] respectively, shall not nor will, during the continuance of the said annuity or yearly rent-charge of —— pounds, so secured as aforesaid, advance or lend to the said [*grantor*], his executors, administrators, or assigns, any further sum or sums of money upon the security of the aforesaid messuages, tenements, lands, and premises, or of any part thereof, without the consent in writing of the said [*grantee*], his executors, administrators, or assigns. AND FURTHER the said [*first mortgagee*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*first mortgagee*], his heirs, executors, administrators, and assigns, shall and will from time to time, and at all times hereafter, during the continuance of the aforesaid annuity or yearly rent-charge of —— pounds, (unless prevented by fire, or some other inevitable accident,† upon every reasonable request, and at the proper costs and charges in the law, of the said [*grantee*], his executors, administrators, or assigns, produce and show, or cause to be produced and shown, unto the said [*grantee*], his executors,

Covenant by prior mortgagees not to lend further sums without grantee's consent.

Covenant by first mortgagee for production of title deeds;

† *Vide* Vol. 1, p. 2, (*a*).

(*k*) If the receiver be appointed by a separate deed, see the form, *post*, p. 459, 465.

RECEIVER BY SEPARATE DEED.

The receiver is sometimes appointed by a separate deed, in order to

GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

for the purchase of the said annuity or yearly rent-charge of —— pounds, it was *agreed, that for securing the due and regular payment thereof, the said [*receiver*] should be appointed receiver of the rents and profits of the said messuages, tenements, lands, and premises hereinbefore particularly mentioned, and hereby charged and released, and covenanted to be surrendered as aforesaid, upon the

Recital of agreement to appoint receiver.

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administrators, or assigns, or to any trustees or trustee for the time being of these presents, or to his or their, or any or either of their counsel, attornies, solicitors, or agents, or at any trial or hearing in any court of law or equity, or upon every other reasonable occasion, all and singular, or any or either of the deeds, instruments, and writings mentioned and specified in the schedule hereunder written, or hereunto annexed: *And* shall and will, (unless so prevented as aforesaid,) at the like requests, costs, and charges of the said [*grantee*], his executors, administrators, and assigns, permit and suffer any abstract or abstracts, copy or copies to be made and taken, of all or any, or either of the said deeds, instruments, and writings; *And* keep and preserve the same safe, unobliterated, and uncancelled. IN WITNESS, &c.

to permit abstracts and copies to be made;

and to keep originals safely.

THE SCHEDULE to which the above written indenture refers."

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save the expense of a counterpart of the grant of the annuity, as it would not in some instances be prudent for the grantee to risk the loss of the grant by intrusting it with the receiver. This, perhaps, is a very nice precaution, as there is in fact no necessity for intrusting the receiver with the grant; for if the grantee himself, or any other person, were to show the deed to the tenants, that would be a sufficient authority for them to pay the rents to the receiver. The appointment of a receiver in large annuity or mortgage transactions, is very desirable as it generally is the means of securing the payments before the time the receiver is authorized to act; but not in one case out of fifty does the receiver ever act. When he is appointed by a separate deed, the grantee keeps that deed also, until it becomes necessary, and he wishes the receiver to commence the execution of his office, at which time the deed of appointment is delivered to him.

terms, stipulations, and agreements hereinafter contained. NOW THEREFORE THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the said agreement, and for the considerations hereinbefore expressed, they the said [*grantor*] and [*trustee*] (*l*), on *the nomination and at the request of the said [*grantee*], (testified by his executing these presents,) *have*, and each of them *hath*, constituted and appointed, and by these presents *do*, and each of them *doth*, constitute and appoint the said [*receiver*] receiver and agent from time to time, in the names of them the said [*grantor*], and [*trustee*], or in the name of either of them, to ask, demand, collect, and receive ALL and every the

GRANT, &c. LEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

Third Testatum.

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Appointment of receiver of rents.

(*l*) If the appointment be in a demise, the person to whom the term is granted should join in the appointment, because he has the immediate legal estate in reversion. In modern printed books of precedents there is a common error in this respect; for after the the grantor or mortgagor has parted with the immediate legal estate in reversion, he alone, by the forms in those books, appoints a receiver of the rents, with power to distrain, &c.; but such an appointment is of very little utility, for a distress made under it could not be supported. Under such an appointment as the above the receiver cannot distrain, &c. in his own name, because he has no estate in the land. *Pitt* v. *Snowden*, 3 Atk. 750. The distress should be made by the receiver as the attorney of the grantor and trustee. But it seems that as to any lease made before the conveyance in trust to secure the annuity, or as to any lease made afterwards by the grantor by parol, or by deed not indented, or as to a tenant from year to year, the receiver may distrain as the attorney of the trustee alone, as he has the immediate legal estate in reversion: and that as to any lease made by the grantor only by indenture, after the conveyance in trust to secure the annuity, the receiver may distrain as the attorney of the grantor alone, because the lessee would be estopped by the indenture from pleading that his grantor had not the legal estate. Wms. n. 2 Saund. 410 (*a*). [And if a receiver, who has no estate, grants a lease, the lessee is estopped from objecting to his right to distrain. *Dancer* v. *Hastings*, 4 Bing. 2.] But the authority of the receiver ceases as to each of the persons appointing, on their respective deaths. *Vide post*, 303, (*n*). Therefore to enable the receiver to distrain in his own name, either before or after the decease of the persons appointing, the premises should be demised to him, as in the form of an APPOINTMENT OF A RECEIVER BY A SEPARATE DEED, *post*, title, APPOINTMENT, p. 412, to which form the reader is referred for other annotations on receivership.

Unless the reversion be in a receiver, he cannot distrain, &c. in his own name.

GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

rents and profits of ALL and singular the said messuages, tenements, lands, and premises hereinbefore particularly mentioned, and hereby charged and released, and covenanted to be surrendered as aforesaid, of and from the present and future tenants and occupiers thereof respectively, as and when the same shall from time to time become due and payable: *And* in case of the non-payment of the said rents and profits, or any of them, to take and use such lawful remedies for recovering and obtaining payment thereof, or any part thereof, by action, suit, distress, or otherwise, as shall be thought necessary: *And further*, to do, perform, and execute all other matters and things needful and requisite for the collecting and receiving the said rents and profits, and every part thereof, as fully and effectually, to all intents and purposes, as they the said [*grantor*] and [*trustee*], or either of them, could or might do. AND the said [*grantor*], [*grantee*], and [*trustee*] do, and each and every of them doth hereby order and direct all and every the tenants and occupiers of the said messuages, tenements, lands, and premises, to pay unto the said [*receiver*] all and every the rents and profits thereof for the purposes hereinafter mentioned: *And* do, and each and every of them doth, hereby declare that his receipts shall be good and sufficient discharges to such tenants or occupiers for such rents and profits as they shall respectively pay to him. AND *it is hereby agreed and declared* between and by all the parties to these presents, that the said [*receiver*] do and shall from time to time pay and apply the rents and profits which he shall receive by virtue of these presents, in manner following; that is to say, do and shall, in the first place, pay thereout all taxes, rates, assessments, and impositions which now are or hereafter may be taxed, rated, charged, assessed or imposed on the said messuages, tenements, lands, and premises, or any of them, or on the owner of the same premises, for or in respect thereof; together with the expenses of all necessary repairs thereof which ought to be done by the landlord: *And also* do and shall retain and deduct to and for himself thereout (five) pounds per centum upon the gross rents which he shall actually receive as aforesaid, as a compensation for his

Power of action, distress, &c.

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and to do all other requisite acts.

Direction to tenants to pay rents to receiver:

his receipts to be sufficient discharges.

Declaration that receiver shall out of rents,

pay all taxes, &c. and expenses of repairs;

retain for himself 5*l.* per cent. on rents received:

GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

time and trouble in acting as receiver as aforesaid: *And* in the next place, do and shall pay and satisfy the said [*grantee*], his executors, administrators, and assigns, the said annuity or yearly rent-charge of —— pounds, as and when the same shall from time to time become due and payable, according to the true intent and meaning of these presents: *And lastly*, do and shall pay, or cause to be paid, unto the said [*grantor*], his heirs, executors, or administrators (*m*), or as he or they shall order * or direct, all the clear residue or surplus of the rents and profits of the said messuages, tenements, lands, and premises which shall from time to time remain, after answering the several purposes aforesaid, or such of them as shall be in a state of actual performance. AND THE SAID [*receiver*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors. administrators, and assigns, and also severally with the said [*grantor*], his heirs, executors, and administrators, that he the said [*receiver*] shall and will from time to time, so long as he shall continue to be the collector or receiver of the aforesaid rents and profits, truly and punctually pay and apply, or cause to be paid and applied, in manner and for the intents and purposes aforesaid, all such sums of money as shall be collected or received by him, by virtue of, or under the aforesaid power or authority. AND THE SAID [*grantor*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantee*], his executors, and administrators, in manner following; that is to say (*n*), that he the said [*grantor*]

pay annuity to grantee:

and pay to grantor the residue.

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Covenant by receiver to apply rents accordingly.

Covenant by grantor not to revoke power to receiver, or impede the execution of his office:

(*m*) *Æquitas sequitur legem;* Cas. temp. Talb. 44, 51; therefore the surplus of such rents as become payable at any time before the day preceding the grantor's death, will belong to his personal representatives; but if the grantor die before the rent becomes payable, or on the day on which it is to be paid, before midnight, the heir will be entitled to the surplus of the rent. *Duppa* v. *Mayo*, 1 Saund. 287, and Wms. n. (17); *Rockingham* v. *Oxenden*, Salk. 578, *Cutting* v. *Derby*, 2 Wm. Bla. 1077; Co. Litt. 202, a (1); 3 Bac. Abr. 63, Gwil. ed. *Executors, &c.* (H) 3; 6 *Ibid.* 23, *Rent*, (H).

Rents payable in grantor's life belong to his executor; but those afterwards, to his heir.

(*n*) This clause being usually inserted, had better be retained; but

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*shall not nor will, without the previous consent in writing of the said [*grantee*], his executors, administrators, or assigns, revoke the powers, or authorities hereby given to the said [*receiver*], or to be given to any such future receiver as hereinafter is mentioned, or any of them; or do or suffer to be done, any act or thing to lessen, or in any manner affect the same, or impede the execution thereof, during the continuance of the said annuity or yearly rent-charge of —— pounds: *And also*, that in case the said [*receiver*], or any future receiver to be appointed as hereinafter is mentioned, should die or refuse, or become incapable to collect and receive the rents and profits of the said messuages, tenements, lands, and premises, or should misbehave himself in the confidence hereby in him reposed during the continuance of the said annuity or yearly rent-charge of —— pounds; *Then*, and in any of the said cases, he the said [*grantor*] shall and will join with the

to join in appointing new receiver:

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it does not appear that the first part of it is necessary, any farther than as being the foundation of an action for breach of covenant, in case the grantor should, by a revocation, attempt to destroy the receiver's authority. For although a power of attorney be a revocable instrument, yet where it is executed for a valuable consideration, neither a court of law, *Walsh* v. *Whitcomb*, 2 Esp. 565; *Odes* v. *Woodward*, 2 Ld. Raym. 850; nor a court of equity, will permit it to be revoked, *Bromley* v. *Holland*, 7 Ves. 28; unless with the consent of the person beneficially interested. But death is a revocation of a power of attorney, though coupled with an interest; *Watson* v. *King*, 4 Camp. 272; 1 Stark. 121, *S. C.*; Co. Litt. 52, b.; *Shipman* v. *Thompson*, Willes, 105; *Wynne* v. *Thomas*, Willes, 565; 1 Bac. Abr. 320, Gwil. ed. *Authority* (F. 8.); and therefore payment to the attorney, made after the death of the principal, is not a good payment. *Wallace* v. *Cook*, 5 Esp. 117. [*Vide* Vol. 5, p. 138.]

Power of attorney executed for valuable consideration not revocable, without consent or by death.

Payment to attorney after appointor's death, bad.

In what cases under such an appointment of receiver as the above, the grantor or the trustee shall be considered as the principal, *vide ante*, p. 301.

To prevent the determination of the receiver's authority by the death of the persons appointing, and to prevent an attempt to determine it by an improper revocation of the power, the premises should be demised to him, as mentioned in the note under the *recital of the demise*, in APPOINTMENT OF RECEIVER BY A SEPARATE DEED, *post*, title APPOINTMENT, p. 418.

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said [*grantee*], his executors, administrators, or assigns, in removing the said [*receiver*], or any such future receiver from his said employment; and shall and will duly constitute and appoint such other fit person in his stead, as the said [*grantee*], his executors, administrators, or assigns, shall from time to time nominate or approve, to collect, receive, and pay the said rents and profits of the said messuages, tenements, lands, and premises, upon and for the trusts and purposes hereinbefore declared thereof; and so from time to time, when and as often as the like case shall happen during the continuance of the said annuity, or yearly rent-charge of —— pounds: *And* *in case the said [*grantor*] should refuse or neglect so to [*305] do, for the space of three calendar months next after the death, incapacity, or misbehaviour of the said [*receiver*], or any such future receiver as aforesaid; *Then*, and in every such case it shall and may be lawful to and for the said [*grantee*], his executors, administrators, or assigns, if he or they should think fit, without the consent or concurrence of the said [*grantor*], to constitute and appoint some fit person to collect, receive, and pay the said rents and profits, upon the trusts and for the purposes aforesaid, with such reasonable salary for his trouble and expense as he the said [*grantee*], his executors, administrators, or assigns shall think proper, not exceeding (one shilling) in the pound upon the gross rental of the said premises, for the time being. PROVIDED ALWAYS, *and it is hereby declared*, that the said [*grantee*], his executors, administrators, or assigns, shall not in anywise be charged with, or answerable, for any loss, misapplication, or non-application of the said rents and profits, or any part thereof, by reason of any default, neglect, or breach of trust in the said [*receiver*], or any future collector or receiver to be appointed as aforesaid; *But*, that all such loss, misapplication, or non-application, and every receiver's salary, shall be wholly borne and sustained by the said [*grantor*], his heirs, executors, or administrators. PROVIDED ALSO, *and it is hereby agreed and declared*, that the said [*receiver*], or any receiver so to be appointed as hereinbefore is mentianed, shall not in any wise exercise the powers or authorities hereinbefore mentioned, or any of them, until one half-yearly (*or* quarterly)

and in case of grantor's neglect, that grantee alone may appoint new receiver.

Grantee not to be answerable for loss or default of receiver, but same, with receiver's salary, to be borne by grantor.

Receiver not to act until annuity be in arrear 30 days.

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payment of the said annuity or yearly rent-charge of —— pounds shall be in arrear for the space of thirty days or more, next after the same shall become payable, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding. [PROVIDED ALWAYS (*o*) *and it is hereby declared and agreed* by and between the said parties to these presents, that the powers and authorities hereinbefore *given to the said [*receiver*], or to be given to any such future receiver as hereinbefore is mentioned, shall not prevent, or be construed to restrain the said [*grantee*], his executors, administrators, or assigns, from suing for, recovering, or compelling payment of the said annuity, or yearly rent-charge of —— pounds, or any part thereof, or from using or exercising all or any of the powers or remedies hereinbefore given, limited, or reserved to him or them for enforcing such payment, or for obtaining possession of the said messuages, tenements, lands, and premises, so charged therewith as aforesaid, or any part thereof; *And also* shall not prevent, or be construed to restrain the said [*trustee*], his heirs or assigns, from executing or exercising all or any of the trusts, powers, or authorities hereinbefore reposed, given, limited, or reserved to him or them.] IN WITNESS, &c.

Proviso that appointment of receiver shall not preclude grantee from exercising any of his remedies;

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nor trustee from executing the trusts.

(*o*) When the receiver is appointed by the same deed, the above proviso is not usually inserted; but even in that case it seems prudent to retain it in order to prevent misunderstanding.

GRANT AND UNDERLEASE.

*GRANT *of an* ANNUITY *by a Lessee for Ninety-nine Years, determinable on the Death of a Nominee or Nominees; or by a Lessee for Life or Lives; or by a Tenant for Life under a settlement or Will: with* RECITALS *of the Creation of these several Interests;* UNDERLEASE, (*in order to retain the Freehold Reversion, or to prevent liability to the Rents, &c.*) UPON TRUSTS *for securing the Annuity; and Covenants, &c.* by reference to previous Precedents.

Parties.

THIS INDENTURE, made, &c. BETWEEN [*grantor*], of, &c. of the first part, and [*grantee*], of, &c. of the other part. WHEREAS, &c. (*Recite lease for years,* ut ante, p. 27, *or* p. 45; *and if so, assignment,* ut ante, p. 28, *or* p. 47; *or will or intestacy of lessee,* ut ante, Vol. 1, p. 370—372 (*a*). *Recite * contract for purchase, and*

Recitals as to leases for *years*.

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(*a*) If it be a lease for lives, perfected by livery of seisin, say,

BY LESSEE FOR LIVES.

Recital of a lease for lives perfected by livery of seisin.

"WHEREAS by indenture bearing date on or about the —— day of ——, 18—, and made or expressed to be made between the dean and chapter of the cathedral church of ——, of the one part, and [*lessee*] of, &c. (*or* the said [*grantor*],) of the other part; for the considerations therein mentioned, the said dean and chapter *did* demise and lease unto the said [*lessee*], his heirs and assigns, *All those* messuages, &c. situate and being, &c. with their appurtenances: *To hold* unto the said [*lessee*], his heirs and assigns, from the day next before the day of the date thereof, for and during the natural lives of [*three nominees*], of, &c. and the lives and life of the survivors and survivor of them: *At and under* the yearly rent of ——pounds; and subject to the several covenants, provisoes,

GRANT AND UNDERLEASE.

bond and warrant of attorney, ut ante, p. 108, *but if there be no bond,* ut ante, p. 30.) NOW THIS INDEN-

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and agreements therein contained, on the part of the said [*lessee*], his heirs and assigns, to be observed and performed: *Which* said indenture of lease was afterwards perfected by livery of seisin, a memorandum whereof is thereon indorsed. AND WHEREAS the said [*lessee*] died intestate, on or about the —— day of ——, 18 —, leaving the said [*grantor*], his eldest (*or* only) son, (*or* brother, &c.) and heir at law, who thereupon became seised of the said messuages, &c. for the residue of the said estate therein.

Recital of lessee's intestacy, and seisin of his heir.

If it be a lease for lives by lease and release, say,

Recital of a lease for lives by indentures of lease and release.

"WHEREAS by indenture of lease and release, bearing date respectively on or about the —— day of ——, 18—, the indenture of release being made, or expressed to be made, between [*lessor*], of, &c. of the one part, and [*lessee*], of, &c. of the other part; for the considerations therein mentioned, the [*lessor*] *did* grant, demise, and release unto the said [*lessee*], his heirs and assigns, *All those,*" &c. *ut supra.*

If it be a lease for lives, created under a power, say,

Recital of a lease for lives created under a power.

WHEREAS by indenture bearing date on or about the, —— day of ——, 18—, and made or expressed to be made between the most noble (John) Marquess ——, of the county of ——, on the one part, and [*lessee*], of, &c. of the other part; for the considerations therein mentioned, the said Marquess, by virtue and in exercise of the power or authority therein mentioned and particularly referred to, and of all other powers and authorities enabling him thereunto, *did* limit and appoint, demise and lease unto the said [*lessee*], his heirs and assigns, *All those,*" &c. *ut supra.*

Livery, or something tantamount to it, necessary on granting a lease for lives of lands in possession; but not when the lease

On leases of lands in possession for lives from ecclesiastical and other persons, deriving their effect from the principles of the common law, livery of seisin, or something tantamount to it, is necessary; such as a lease for a year at common law, and a release in enlargement for the lives, after an actual entry by the lessee; or a bargain and sale for a year under the Statute of Uses, and a release in enlargement for the

*TURE WITNESSETH, that, &c. (*Insert grant of annuity by grantor*, ut ante, p. 30; *power of distress* (*b*) *and entry* GRANT AND UNDERLEASE.

lives. But a lease of lands in possession for lives, under a power deriving its effect from the Statute of Uses may be created in the mode prescribed by the power, without any of the above mentioned ceremonies. *Saunders* v. *Owen*, 13 Mod. 201; 2 Salk. 467, S. C.; *Wigson* v. *Garret*, 2 Lev. 149. The reason is, the lease, or more correctly speaking, the appointment, takes effect by way of limitation of the use out of the original seisin of the feoffees or releasees to uses; and it operates by way of shifting use *pro tanto*. It is on that principle the lease continues, notwithstanding the determination of the estate of the person who created it. But if it took effect out of his interest it would determine with his estate. is granted under a power in a conveyance to uses.

If the lessee died intestate, and it be the case, say,

"AND WHEREAS the said [*lessee*] died intestate on or about the —— day of ——, 18—, leaving [*A.*] the wife of [*vendor*], of, &c. his only child and heir at law; and thereupon the said [*vendor*], and [*A.*] his wife, in right of the said [*A.*] became seised of the said messuages, &c. for the residue of the said estate therein." Recital of lessee's intestacy and seisin of vendor and wife in her right.

If the premises were devised, say,

"AND WHEREAS the said [*lessee*], by his last will and testament in writing, duly executed and attested† for the devise of freehold lands, and bearing date on or about the —— day of ——, 18—, and after the decease of the said [*lessee*], and on or about the —— day of ——, 18—, duly proved in the Prerogative Court of the Archbishop Recital of a devise of an estate *pour autre vie*.

† Three witnesses are requisite, 29 Car. 2, c. 3, s. 12; *ante*, Vol. 1, p. 589.

(*b*) If the term be demised to a trustee, a power of distress would be absolutely requisite, the property being leasehold; *vide*, Vol. 1, p. 618; and, although the demise be made to the grantee himself, whereby he would have the immediate legal estate, and thereby be entitled to distrain for any *rents* incident to reversion; *vide ante*, Vol. 1, p. 566, 603, 615, 617; *ante*, p. 273; yet a power of distress should be inserted, to enable him to distrain *for the annuity*. As to the persons liable to a distress for an annuity or rent charge, *vide* Vol. 1, p. 608, 610. Power of distress should be invariably inserted in a grant of an annuity out of leaseholds.

GRANT AND UNDERLEASE.

*by the *grantor*, ut ante, p. 153, &c. mutatis mutandis, *ending thus:*) such possession, when taken, to be without

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of Canterbury, gave and devised *All* his estate and interest in the said messuages, tenements, lands, and premises, to his daughter [*A.*], the wife of [*vendor*], of &c. and to her heirs and assigns, (*or* the heirs of her body, with remainder to the right heirs of the said [*lessee.*])"

A fine requisite to convey a married woman's estate, *pour autre vie.*

It has been already stated, that a fine or recovery is not necessary to bar a *quasi* entail of an estate *pour autre vie;* but that when a married woman is seised of such an estate, either absolutely or *quasi* in tail, a fine is requisite in order to convey it: *vide* Vol. 1, pp. 159, 160: therefore, if it be the case, say,

Recital of conveyance of married woman's estate *pour autre vie*, by lease, release, and fine.

"And whereas by indentures of lease and release, bearing date on or about the —— and —— days of ——, 18—; the indenture of release being made, or expressed to be made between the said [*vendor*] and [*A.*] his wife, of the one part, and the said [*grantor*], of the other part; and by means of a fine [*sur conuzance de droit come ceo*, &c. with proclamations†] levied by the said [*vendor*], and [*A.*] his wife, to the said [*grantor*], in or as of —— Term then last past; and also of a declaration of the uses of that fine, contained in the said indenture of release, *The* said messuages, tenements, lands and premises, were conveyed, limited, and assured to the said [*grantor*], his heirs and assigns, for and during the natural lives of the said [*nominees*], and the lives and life of the survivors and survivor of them; *Subject* nevertheless to the payment, observance, and performance of the rent, covenants, conditions, and agreements in the said indenture of lease reserved and contained, and on the part of the lessee, his heirs and assigns, to be thenceforth paid, observed, and performed."

Lease and release unnecessary when there is a fine.

Sometimes a lease and release are also taken when it is requisite to levy a fine of lands, as in the above recital; but as a fine and declaration of the uses would alone be a sufficient conveyance, as well of any estate for life, as of an estate in fee, the lease and release are an unnecessary expense; and therefore, if the lands were conveyed by fine alone, say,

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† *Vide ante*, Vol. 1, p. 251, (*c*).

*impeachment of waste, so far as the said [*grantor*] can grant that exemption. AND THIS INDENTURE FURTHER

GRANT AND UNDERLEASE.

"WHEREAS by means of a fine [*sur concesserunt*† (or *sur conuzance de droit come ceo, &c.*)], levied by the said [*vendor*], and [*A.*] his wife to the said [*grantor*], in or as of —— Term, in the —— year of the reign of his late (*or* present) Majesty King George the ——; and also of a declaration of the uses thereof, contained in an indenture bearing date on or about the —— day of ——, 18—, and made or expressed to be made between the said [*vendor*] and [*A.*] his wife, of the one part, and the said [*grantor*] of the other part, *The* said messuages, &c. were conveyed," &c. *ut supra.*

Recital of conveyance of an estate *pour autre vie*, by fine and declaration of the use, without a lease and release.

BY TENANT FOR LIFE.

If the form in the text be used where the grantor is tenant for life, under a settlement or will, and he wishes to retain the freehold reversion for his life, to enable him, without the concurrence of the annuitant, to make a tenant to the *præcipe* for suffering a recovery of an estate tail in remainder (as the concurrence of the person having the immediate freehold is in that case requisite); or the grantee (for the reasons stated *ante*, Vol. 1, p. 337, 537-8; *ante*, p. 52, 55,) prefers having chattel interest rather than the freehold estate,—recite the settlement or will, *ut ante*, p. 2, 3, 181.

Advantages of grantor's retaining the freehold reversion. Recital of an estate for life under a settlement or will.

Whether tenant for life with leasing powers can exercise them after he has parted with his life estate.

When a tenant for life, with powers of leasing, &c. charges an annuity on his life estate, or mortgages or sells it, some gentlemen have supposed it requisite, in order to preserve his powers, that he should not part with his whole estate, but only demise it for a term of years, determinable on his death. Thus it is said in a work of considerable merit, "we have seen that a charge on the estate to which the power is appendant, suspends the power during the interest granted; it follows therefore, on the same principle, that a total alienation of the estate must operate as an extinguishment of the power. Thus, if tenant for life, with a power to grant leases in possession, convey away his life estate, the power is gone; it is no longer possible for the donee to execute it, inasmuch as it would be derogatory to his own grant. See Doug. 293. And see *Cooke* v. *Bromehill*, Noy, 66."—Sugden on Powers, 54, 3d edit.; 55, 2d edit. See also to the same effect, 1 Rop. Husband and Wife, 135; 2 *Ibid.* 104. In a qualified sense the first part of the above proposition is correct; for, as the grant of the rent-

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† Proclamations are not made on a fine *sur concessit*. Wilson on Fines, 43, 4th edit.

GRANT AND UNDERLEASE.

Demise of leasehold by way of under-lease.

WITNESSETH, *that for the considerations aforesaid, and for better securing the due payment of the said annuity,

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charge takes effect out of the grantor's interest, the powers are suspended *quoad* the rent-charge, and cannot be afterwards executed so as to defeat the rent-charge, if it be not granted for a longer period than the grantor's life. *Edwards* v. *Slaver*, Hardres, 415. But the conclusion deduced from that proposition does not follow as a necessary consequence. The case referred to in Douglas, it will be shown hereafter, is an authority for the very reverse of the above conclusion. The case in Noy (so far as such an extremely loose case can be considered as an authority,) decided that a power of leasing in a person seised *in fee* in remainder, expectant on an estate for life, was destroyed by his covenant to stand seised to the use of another person *in tail*. Giving to that decision the fullest authority it is capable of, yet the donee of the power still retained a reversion in fee, subject to the estate tail; and therefore, according to the distinction above quoted, his power could not be destroyed, as it was only suspended during the continuance of the estate tail, because he still retained the reversion in fee. Thus it appears that the case referred to in Noy rather militates against than supports the above conclusion. In *Vincent* v. *Ennys*, and *Corker* v. *Ennys*, 3 Vin. Abr. 432, pl. 10, it was held that where a tenant for life with power of leasing, and tenant for life in remainder, with a like power of leasing after the death of the first tenant for life, joined in a mortgage in *fee*, the power of leasing was thereby destroyed. It is not stated whether they conveyed by an innocent conveyance, as a lease and release, or a bargain and sale. If the conveyance of the fee by the tenants for life was by a fine or feoffment, there cannot be any doubt but that the power was thereby destroyed, on account of the peculiarly extensive operation of a fine † or a feoffment. See also the *dictum* in *Saville* v. *Blacket*, 1 P. Wms. 778, that a power of leasing annexed to an estate is destroyed by parting with the estate. The point, however, is now so firmly settled to the contrary, that for the sole purpose of preserving powers of leasing, &c. the above precaution appears to be wholly unnecessary.

Thus it was determined by Lord Mansfield, that if a tenant for life, with power to grant leases when in possession, for twenty-one years, to take effect in possession and not in reversion, reserving the best rent, &c. convey his life-estate to trustees to pay an annuity for his life, and the

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[† Unless the deed declaring the uses demonstrates the intention of the parties to preserve the power. *Tyrrell* v. *Marsh*, 3 Bing. 30.]

or yearly sum of *—— pounds (*c*), *he* the said [*grantor*] *hath* granted, bargained, sold, and demised: And by these

GRANT AND UNDERLEASE.

surplus to himself, the power is *not* thereby extinguished, but that he may still grant leases agreeably to the terms of the power. *Ren* dem. *Hull* v. *Bulkeley*, 1 Dougl. 292.

The last-mentioned decision was fully confirmed by the judgment of the House of Lords in 1821, in the case of *Long* v. *Rankin*, on an appeal from Ireland. [The circumstances of this case shortly were as follow:—In 1761, by indentures of lease and release, lands were settled on *A.* for life, with remainder to *B.* for life, with remainder to the first and other sons of *B.* in tail male, remainder to *C.* for life, with remainder to his first and other sons in tail male; with power to *A.*, *B.* and *C.* when they should respectively be in possession, but not before, by deed, to make leases for thirty-one years or three lives, so as such leases were made in possession and there were reserved the best rents, and there were no fine. In 1772, *B.* by lease and release conveyed his life estate to trustees to secure an annuity, the trusts being out of the rents to pay the annuity, and then to pay the surplus to *B.* And by this deed the annuitants covenanted, that in case the existing lease fell in during the life of *B.*, it should be lawful for him to demise the property for such term as he should think proper, provided not less than the then existing rent were reserved. In —— † *B.* granted a lease with the consent of the annuitants and died in 1788. An ejectment was brought by the remainder man, and the question was, whether the lease, being granted after the tenant for life had parted with his estate, was good.]

Case of *Long* v. *Rankin*, in which a lease made by a tenant for life, who had parted with his estate, was held to be good.

In one part of the very able opinion of the judges, delivered to the House by Lord Chief Justice Abbott, he said, "that though by the deeds granting the annuity, the tenant for life had parted with his life-estate, to which he had become entitled under the settlement, yet nevertheless the life estate originally vested in him was not destroyed by those deeds, as it might, perhaps, have been by a fine or feoffment purporting to convey the fee. An estate for *his* life still continued, though it was no longer vested in him. Leases for years made in virtue of a power are not derived out of the estate of the lessor. It is not *essential* to the validity of a leasing power, or a lease granted in virtue of such

† In the report of the case, Sugd. Vend. 682, the date is inaccurately stated to be 1811.

(*c*) If the premises be demised to a trustee, there should be a nominal consideration, &c. *ut ante*, p. 155.

Demise to trustee.

GRANT AND UNDERLEASE.

Parcels.

presents *doth* grant, bargain, sell, and demise unto the said [*grantee*], his executors, administrators, and assigns, ALL

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a power, that the lessor should have any interest whatever in the lands demised. A leasing power given to a tenant for life is usually spoken of in our books as a power appendant to the estate of the tenant for life; and it is said that the estate of the lessee is in such a case derived out of the estate of the tenant for life, for such period of the term as he may happen to live. It would probably be more correct to say, that it operates upon that estate, than to say, that it is derived out of it, even during that period. But a leasing power may by *express terms* be inseparably annexed to the estate for life." His lordship concluded with these words: "We ought not, therefore, to hold that such a power is extinguished by a transfer of the estate, unless we see clearly in the language of the deed whereby the power is created, that the donor of the power intended inseparably to annex it to the life estate given, and to a continuance of that estate, in the identical person to whom it is given.' The judgment of the House was delivered accordingly. The case of *Long* v. *Rankin* will be fully reported in the next number of Mr. Bligh's Parliamentary Cases, from whose notes the above extract is taken: to his kindness the reader is indebted for this early intimation of the above important decision.

In consequence of the determination in the case of *Long* v. *Rankin*, it may be considered as clearly settled, that a conveyance of the whole life estate, whether by way of mortgage, or upon trusts for securing an annuity, or upon an absolute sale, would not now be deemed an extinguishment of a power appendant or appurtenant, unless it be by a tortious conveyance, as by fine or feoffment, or recovery, *Smith* v. *Death*, 5 Madd. 371, purporting to convey a fee.

Remarks upon *Long* v. *Rankin*.

[It is not, however, too readily to be inferred, that a tenant for life, who has parted with his estate, can exercise a power of leasing without the consent of the alienee, unless he has stipulated for the reservation of such a power; for in *Long* v. *Rankin*, it will be remembered, there was such a stipulation; and some, at least, of the eminent and very learned persons who decided that case, evidently considered that it did not go the whole length of supporting Lord Mansfield's decision in *Ren* v. *Bulkeley*; for Lord Eldon observed, "I am a little anxious to say, that I desire it may not be understood that I have given any opinion whatever with respect to the decision of *Ren* v. *Bulkeley*." Sugd. Pow. 4th ed. 687. The point seems to turn much upon the same principle as the question, whether the *cestui que trust* for life of a settled fund can concur in powers for changing trustees, &c. after alienation (as to which, *vide post*, Vol. 5, p. 563.) It should seem, however, that if the leases would

GRANT AND UNDERLEASE.

THOSE the *said messuages, tenements, lands, and premises hereinbefore particularly mentioned, and hereby charged with the payment of the said annuity, or yearly sum of —— pounds, or intended so to be, with their and every of their appurtenances (*d*): *Together* with the said recited inden- With lease and assignment.

be good against the remainder-man, provided a stipulation authorizing the tenant for life to grant them were introduced into his conveyance, it would follow, that such leases would be equally valid without a stipution to this effect, if made with his concurrence. This principle is very important, not only as affecting powers of leasing, but also other powers, to which allusion has just been made.]

[Where a tenant for life joins in a recovery, the universal practice is to convey only during the joint lives of himself and the tenant to the præcipe; and it is also customary to insert an express declaration, that the demise or conveyance shall not affect, but, on the contrary, be subservient to, the powers. This precaution applies to powers in gross as well as to powers appendant. The object is to leave a reversion in the tenant for life. The powers may be executed in the same manner as if the donee had not parted with any portion of his estate. *Roper* v. *Halifax*, C. B. T. & M. terms, 1816; MS. cited Sugd. Pow. 55, 656, 3d ed.—*Note by Mr. B.*]

(*d*) The clause of "All the Estate," &c. although inserted in modern printed books of precedents, is highly improper, and should be invariably omitted in a demise. If that clause were inserted in the above form, and it should have any operation, the very purpose for which an underlease is taken would be entirely defeated. (See the reasons for which an underlease is preferred to an assignment, *ante*, Vol. 1, pp. 337, 537, 538; *ante*, pp. 52, 55.) Thus it has been held and adjudged, that if a lessee for *years* of a messuage, grant *all his interest and estate* in the messuage, then the whole lease passes. *Wynnybank's case*, cited *Griffin's case*, 2 Leon. 78. So where a termor reciting by indenture his term and lease, granted *all his term, estate, and interest*, to another; *habendum* to him and his assigns, immediately after the grantor's death; it was ruled and adjudged, on a special verdict, that the *habendum* was void, and that the premises of the grant passed the entire term to the grantee immediately; *Lilley* v. *Whitney*, Dyer, 272, b.; because the premises of the deed and the *habendum* could not stand together, the estate for life intended to be reserved to the grantor, being greater than a term for years; the Court, therefore, rejected the *habendum*, rather than permit it to destroy the whole grant. *S. C.* cited Plowd. 520. So also it is said that an *habendum* cannot frustrate a grant which was complete before; *Stukely* v. *Butler*, Hob. 171, as the case is, 7 Edw. 6. Bro. Abr. *Grauntes*, pl. 154; *Leases*, pl. 66, where

The clause of "all the estate," &c. should be omitted in a demise.

The *habendum* may enlarge, but cannot abridge, the premises.

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*ture of lease and assignment (*e*). To HAVE AND TO HOLD the said messuages, tenements, lands, and all and singular

Habendum for residue of term wanting ten days,

a lessee for years granted all his estate, *habendum* after his death. See also *Goshawke* v. *Chigwell*, Jones, 205; Cro. Car, 154, *S. C.*, and a similar determination on a writ of error in the Exchequer Chamber, where the circumstances were not so strong. *Germain* v. *Orchard*, 1 Salk. 346, affirmed in the House of Lords,† *Germain* v. *Orchard*, Show. Par. Cas. 206. Independently of the principle established by the above determinations, according to Lord Coke's general rule, the *habendum* may enlarge the premies, but cannot abridge them. Co. Litt. 299. a. The case of the Earl of *Derby* v. *Taylor*, 1 East, 502, has been supposed to have established a principle of construction contrary to the early authorities. See 1 Pres. Abs. 96. In that case *A.* and *B.* lessees for *lives*, by indenture demised, granted, bargained, sold, assigned, transferred, and set over unto *C.* his executors. administrators, and assigns, a messuage, &c. held by lease under the Earl of Derby, and therein stated to be then in the possession of *C.*, his assignees, &c. And all the estate, right, title, interest, good will, and tenant right, sole power of leasing or renewing

Qualifying words in the *habendum* rejected, where.

[† Upon this principle too it was lately held, that where by lease and release *A.* conveyed certain lands to *B.*, his heirs and assigns, to hold to *B.*, his heirs and assigns, *from and after the decease of H.*, (and which it was contended was void as the limitation of a freehold estate in *futuro*,) the *habendum* was to be rejected as repugnant to the premises, the distinction being, that where the premises merely describe the property without containing any words descriptive of the interest intended to be conveyed, and the *habendum* (which is then necessarily resorted to for the purpose of ascertaining the quantum of interest) is so expressed as to be contrary to the rules of law, the deed will be void; but if there are words of limitation in the premises, and an *habendum* follows, which is inconsistent therewith and contrary to the rules of law, it may be rejected. Applying this construction to the present case, the grant was immediate and the use only postponed, and therefore the deed was good. *Goodtitle* d. *Bodwell* v. *Gibbs*, 5 Barn. & Cres. 709; see also *Carter* v. *Madgwick*, 3 Lev. 39.]

A grantee of a tenant for life should have the title deeds in his power.

(*e*) If the demise be made by a tenant for life under a deed or will, he is entitled to the custody of the title deeds; *vide* Vol. 1, p. 161 (*a*); and as such a demise as the above conveys his whole interest, excepting a nominal reversion, the grantee should either have the deeds delivered to him, or deposited in the hands of a third person. [But being a termor only he is not entitled to the deeds without an express grant; *vide post*, Vol. 5, p. 407.]

*other the premises hereby demised, or otherwise assured, or intended so to be, with their and every of their appur- GRANT AND UNDERLEASE.

leases of the said premises, property, benefit, advantage, claim, and demand whatsoever, both in law and at equity, of them the said *A.* and *B.* of, at, or to the same, every or any part or parcel thereof: *habendum* the said messuage, &c. and all and singular other the premises abovementioned, and intended to to be *hereby assigned*, with their appurtenances, unto *C.*, his executors, administrators, and assigns, from the day next before the day of the date thereof, for and during, and unto the full end and term of ninety-nine years thence next ensuing, and fully to be complete and ended, if the three lives named in the indenture of lease thereof, or any of them, should so long live; and that in as large, ample, and beneficial way, manner, and form, to all intents, constructions, and purposes, as they the said *A.* and *B.*, their *heirs*, executors, or administrators, or any of them, can, may, might, or could have held and enjoyed the same if these presents had not been made: *yielding and paying* therefore yearly during the said term unto the lord and owner of the reversion and inheritance of the said *hereby assigned* premises, the yearly rent of 5*s.* 6*d.* &c.; then followed the usual covenants for quiet enjoyment, free from other incumbrances than the rent, and for further assurance. All the lives die before the expiration of the term of ninety-nine years, and it was held that the lessor could not maintain an action against the executor of *C.* as the assignee of all the estate, &c. for a breach of covenant in not delivering the premises up at the end of the term in a state of good repair, pursuant to a covenant in the original lease. Lord Kenyon asked, "How could this conveyance operate to pass the freehold without proper words for that purpose?" The counsel for the lessor answered, "it may be presumed, if necessary, that livery of seisin was made." His lordship said, "that is a fact which at any rate must be found by the jury. And I am not satisfied that there is any ground in this case upon which the jury could be directed so to find. The question at present before the court is as to what estate passed to *C.* under the indenture? It cannot be said that a term of ninety-nine years is co-extensive in law with an estate of freehold: and here are no words by which the freehold, of which the original lessees were seised, was conveyed to the defendant's testator. Then how can we say that the whole interest in the lease passed to him? The conveyance of all the grantor's "estate, right, title, interest," &c. to a man and his executors for years, cannot convey a freehold. Such words mean no more than all their interest, &c. in the legal estate thereby granted; and we cannot give those words a larger operation than the parties themselves have declared

GRANT AND UNDERLEASE.

*tenances, unto the said [*grantee*], his executors, administrators, and assigns henceforth, for and during (*f*) all

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they should have." The reader will perceive that the above case is founded entirely on feudal principles; the point determined by it being, that a lease for *lives* cannot pass by the clause of "all the estate," without a lease for a year, or livery of seisin, it being a freehold estate: that reason not being applicable to a lease for years, the case, so far from weakening the old determinations respecting leases for *years*, rather strengthens them. Indeed the above determination introduced no new point, but was strictly agreeable to the resolution of the court in *Baldwin's* case, 2 Co. 24, a, that when to the estate limited by the premises a ceremoney is requisite to the perfection of the estate; and to the estate limited by the *habendum*, nothing is required to the perfection and essence thereof, but only the delivery of the deed; there, although the *habendum* be of a lesser estate than is mentioned in the premises, the *habendum* shall stand. But it was resolved in the same case, that when to things which take their essence and effect by the delivery of the deed without other ceremony, and which lie in grant, there, in such a limitation, the *habendum* would be repugnant and void. 2 Co. 23, b; 8 Co. 154, b. If there had been other circumstances in the above case of *Derby* v. *Taylor*, the *habendum* would most probably have been rejected; for although livery of seisin, or something tantamount to it, is requisite on a conveyance of lands *pour autre vie*, whether it be made to the lessee or grantee alone, or to him, his heirs and assigns, or to him, his executors, administrators, and assigns; *Campbell* v. *Sandys*,

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UNDERLEASE BY LESSEE FOR NINETY-NINE YEARS, IF, &C.

(*f*) If the original lease be for ninety-nine years, if a nominee or nominees should so long live, say,

"for and during and unto the full end and term of ninety-eight years, if the said [*nominee*] (*or* [*nominees*] (any) or either of them) should happen so long to live."

If the original lease be for a life or lives absolute, say,

UNDERLEASE BY LESSEE FOR LIVES.

"for and during and unto the full end and term of ninety-nine years, if the said [*nominee*] (*or* [*nominees*] (any) or either of them) should happen so long to live."

If it be a demise or underlease by a tenant for life under a settlement or will, say,

DEMISE BY TENANT FOR LIFE.

"for and during and unto the full end and term of ninety-nine years, if the said [*grantor*] should happen so long to live: *Nevertheless* UPON THE TRUSTS," &c. *ut supra*, 318.

the *rest, residue, and remainder now to come and unexpired of the said term of —— years, in and by the said recited indenture of lease granted as aforesaid, wanting ten days: *Nevertheless* UPON THE TRUSTS, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, and agreements hereinafter expressed and contained of and concerning the same; that is to say UPON TRUST, &c. *(Add trusts, covenants, &c.)* ut ante, 156, 33, &c. mutatis mutandis; *saying*, "the messuages, tenements, lands, and premises hereby demised, or otherwise assured, or intended so to be:" "for

GRANT AND UNDERLEASE.

Upon trusts for securing annuity,

with trusts, covenants, &c. by reference.

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1 Scho. and Lefr. 290; yet livery of seisin may be presumed, after twenty years' possession; *Rees* v. *Lloyd*, 1 Wigthwick, 123; but in the above case there had been only ten years' possession when the action was brought. However, as the indenture stated the premises to be in the occupation of *C.* his assignees, &c. if *C.* had executed the deed according to *Baldwin's* case, 2 Co. 23, b, the conveyance must have taken effect as a *grant* of the reversion of the whole estate for lives; and livery being therefore unnecessary, the *habendum* must have been rejected for repugnancy. For a recital in a freehold lease, that the lands are "now in the occupation and tenure of the lessee and his undertenants," estops the lessor from contending that the lessee was not in possession, so as to render livery of seisin unnecessary. *Rees* v. *Lloyd* 1 Wightwick, 123. The principle of which determination is equally applicable to a grantee, or any other person executing an indenture, and all persons claiming under him. Com. Dig. *Evidence*, (B. 5,) *Estoppel*, (A. 2.) Then supposing, for either of the above reasons, the livery was unnecessary, the grant being to *C.* his executors, &c. would have been no solid objection to its taking effect by the premises; for the heir could not take the lands, because he was not named, and therefore under the Statute of Frauds, 29 Car. 2, c. 3, s. 12, (stated Vol. 1, p. 589,) the executors would have taken the estate *pour autre vie*, just in the same manner as if they had not been named in the grant. *Vide* Vol. 1, p. 595. *Ripley* v. *Waterworth*, 7 Ves. 426, 451, 452; *Campbell* v. *Sandys*, 1 Scho. and Lefr. 290. See further, as to the operation of the *habendum* in explaining and qualifying the premises, Co. Litt. 21, a, 183, a, 299, a; 14 Vin. Abr. 144, *Grants* (I. a.) to (N. a.); 3 Bac. Abr. Gwill. ed. 158, *Feoffment* (C.); 2 Sand. Uses, 255, 3d ed.; 4 Cru. Dig. 329, 2d ed.; and INDEX TO THE NOTES, *infra*, title HABENDUM. In some books the clause of "all the estate," in a demise, is thus qualified at the end of it, "for and during the said term;" but the clause being informal and unnecessary, it had better be entirely omitted in a demise.

Livery of seisin may be presumed after twenty years possession.

A recital in a freehold lease, that the lands are in the occupation of the lessee, renders livery unnecessary as against the lessor.

GRANT AND UNDERLEASE.

the rest, residue, and remainder of the said term of —— years, wanting ten days;" *or if it be for years determinable on death,* "the said term of ninety-nine years, determinable as aforesaid." IN WITNESS, &c.

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MEMORIAL.

MEMORIAL *of an* ANNUITY *to be enrolled in* CHANCERY.

A MEMORIAL of an *Annuity* (*a*) to be enrolled in his Majesty's High Court of Chancery, pursuant to an Act of Parliament, made for that purpose (*b*).

(*Fill up the form,* ante, Vol. 1, p. 330, with such

If charged on freehold or leasehold estates in Middlesex or York, a memorial should be registered.

(*a*) If an annuity be charged on freehold or leasehold estates in Middlesex or Yorkshire, whether the grant be or be not within the exception of the Annuity Act, a memorial should be registered in the particular county registry. For the form, *vide post,* Vol. 5, p. 229.

[So if the estates charged be in Ireland, the deed should be registered at the office in Dublin, or at the Irish Register Office in Cursitor Street, London, although Ireland is not within the Annuity Act. *Vide ante,* Vol. 1, p. 335. *Note by Mr. B.*]

Directions as to the memorial, under the Annuity Act.

(*b*) By the 53 Geo. 3, c. 141, s. 2, *ante,* Vol. 1, p. 330, within *thirty* days after the execution† of annuity securities (not within the exception of 10th section), a memorial should be enrolled in the High Court of Chancery. The memorial must have a *one pound* stamp. 55 Geo. 3, c. 184. It is usually written on a piece of parchment, a little wider than a common copy of court roll, with ruled ink lines, according to the form in the act. It is not necessary or usual either for any of the parties to sign the memorial, or for it, or any of the securities, to be acknowledged. The memorial should be left, within thirty days, at the *Enrolment Office,* at the top of *Chancery Lane.* If the grantee

† See 10 Ves. 228.

alterations therein as the nature and circumstances of any particular case may reasonably require (*c*).) MEMORIAL.

wishes to have a certificate indorsed on the securities of their having been memorialized, they should also at the same time be left there; and a few days afterwards the securities may be obtained, with the following certificate indorsed, if the memorial were left in due time: "A memorial of this deed was enrolled in his Majesty's High Court of Chancery, pursuant to an act of parliament made for that purpose." But if the memorial be not left there until after the thirty days, the words "pursuant to an act of parliament made for that purpose" are omitted. This variation in the form of the certificate is *therefore important. A record in the office states the day and hour when the memorial is left; and it is to be regretted that there is not, agreeably to the provisions of the act, *ante*, Vol. 1, p. 333, sect. vii. a similar statement in the indorsed certificate, as in the case of deeds memorialized either in the York or Middlesex registry. For if the grantee should afterwards sell the annuity, it would be requisite for the purchaser to ascertain, by means of a search, whether the securities were memorialized within the thirty days. *Vide* Vol. 1, p. 857. If the certificate stated that information, the trouble and expense of a search would be saved.† [*320]

When the consideration is paid by a draft or check on a banker, the time when it is payable should be stated.

*Where part of the consideration of an annuity consisted of a draft payable at a banker's, it was held that it was necessary to state in the memorial at what time such draft was payable; and though the application for setting aside the securities was made twelve years after the execution of the deed, and after the deaths of the attesting witnesses, the court set them aside, imposing on the grantors the terms of returning the principal and interest. *Drake* v. *Rogers*, 4 Moore, 402. So, if the consideration for granting an annuity be paid by a banker's cheque, payable immediately, it is necessary to state in the memorial [*324]

[† In the former edition, Mr. Bythewood in this place entered into a detailed statement of some of the cases occuring on the Annuity Acts; but as the substance of those cases, so far as they are now material, has already been given by the present Editor in the summary view taken of the decisions arising on the several clauses of the late act (*vide ante*, Vol. 1, p. 334), it has been deemed advisable to omit these cases here, and supply their place by the statement of a few miscellaneous points not comprehended in the discussion alluded to. These additions are included in the brackets.]

(*c*) Stamp, £1. Stamp.

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the time when it becomes payable. *Poole* v. *Cabanes*, 8 Durnf. & East, 329; *Berry* v. *Bentley*, 6 Durnf. & East, 690.

At law and in equity, on an annuity being vacated, an account is taken of the consideration and interest thereon, and of the payments of the annuity and interest thereon, and the balance (if any) is paid to the grantee; but if the grantee has been overpaid, it seems the surplus cannot be recovered.

*At law, where an annuity is set aside for informality, the practice now is as stated, *ante*, Vol. 1, p. 335 s. *Drake* v. *Rogers*, 4 Moore, 409; *ante*, p. 324; *Poole* v. *Cabanes*, 8 Durnf. & East, 330. In equity, where an annuity was set aside for an informality in the memorial, a general account was decreed of the consideration and costs, and of all money received under *the annuity; the balance to be paid, the securities delivered up, and a reconveyance: but if it appeared the annuitant was overpaid, he was to pay such overplus to the grantor. *Byne* v. *Vivian*, 5 Ves. 604. However, where the defendant admitted he had received more than was due to him for principal and interest, the securities were decreed to be delivered up to be cancelled, and that the defendant should pay the plaintiff the costs of the suit; but the court did not order the defendant to repay the surplus. *Byne* v. *Potter*, 5 Ves. 609. The money being voluntarily paid, it seems the surplus cannot be recovered. *Bromley* v. *Holland*, 5 Ves. 618; 7 Ves. 24; Coop. 9, *S. C.*

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[The point did not arise in this case, as it does not appear that the grantee had received more than the amount of the principal and interest. Lord Eldon, however, though he expressed his doubts upon the principle, seems to have considered it to be an established doctrine since the case of *Byne* v. *Potter*, that the excess of the monies paid by the grantor above the amount of the principal and interest could not be recovered from the grantee. It seems also, from a slight allusion made to the point in a late case, that Mr. Justice Holroyd considered such cases to fall within the principle of the cases respecting illegal wagers, and other voluntary payments, in which it has been held that money actually paid over cannot be recovered back, 6 B. & C. 656, and such there is little doubt would be the determination of the courts upon the question.

Grantee cannot recover consideration money after grantor's acquiescence in the payment of it until its expiration.

And here it may be noticed that where a grantee has received an annuity until its expiration, without any intention being evinced on the part of the grantor to avoid the grant, by availing himself of a defect in the memorial, it is not competent to the grantee, after the death of the *cestui qui vie*, to treat the grant as void, and maintain an action for the recovery of the consideration money; for though the act declares the securities to be void, yet this makes them voidable only at the will of the grantee, and the law will not allow a man to take advantage of his own wrong. *Davis* v. *Bryan*, 6 Barn. & Cress. 651.

As to proof of annuity being memorialized.

It is not incumbent on a person claiming under an annuity deed to prove that it has been duly memorialized. The *onus probandi* lies on those who object to its validity. *Doe* d. *Lewis* v. *Bingham*, 4 Barn. & Ald. 672†. Where a suit in equity was instituted by an annuitant to

[† It is not stated whether the certificate of enrolment was indorsed upon the deed.]

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establish a lien upon certain lands, Sir J. Leach refused to entertain an objection to the validity of the grant for a defect in the memorial, which was not noticed in the pleadings in evidence. *Dunn* v. *Calcraft*, 2 Sim. & Stu. 56. It has been held, that where a third person, wholly unconnected with the grant, and for a separate consideration, (namely, a certain commission,) by a letter to the grantee guaranteed the payment of an annuity, it was not necessary to memorialize this guarantee. *Sandilands* v. *Marsh*, 2 Barn. & Ald. 673.]

An assignee generally in the same situation as the grantee.

Where an annuity had been assigned for a less sum than the original purchase money, an account was directed of the consideration paid by the original grantee of the annuity, with interest at *five per cent.*, and of the payments of the annuity to the grantee, or any persons claiming under him by assignment or otherwise, to be applied in discharge of the interest and principal of the consideration; and if the consideration, with interest, should appear to be fully repaid, or, if not, upon payment by the plaintiff of what should be remaining due from him, the securities to be delivered up, &c. with costs; the assignee, unless under special circumstances, being in the situation of the grantee. *Bromley* v. *Holland*, 5 Ves. 610; 7 Ves. 3, 29. [1 Salk. 155; 3 P. Wms. 251, n.; *S. C.* Coop. 9.]

In some cases, premiums paid for life insurance have been allowed.

But the grantee is not allowed in the account the premiums for insuring the life of the grantor, and costs incurred in supporting the annuity. *Ex parte Shaw*, 5 Ves. 620. However, in some cases the premiums paid for insurance have been allowed, under particular circumstances: as where the bill offered to pay principal and interest, and other reasonable demands, and a letter was admitted in evidence, written by the grantor, prior to the grant, in another negociation, which did not take place, and in which he proposed the insurance of his life as a reasonable thing. *Hoffman* v. *Cooke*, 5 Ves. 623, 653. And see *Gwynne* v. *Heaton*, 1 Bro. C. C. 11.

Master directed to make rests.

In *Hoffman* v. *Cooke*, it was directed that the Master should make rests upon the payment of each sum paid for the insurance, and also upon each sum paid to the annuitant on account of the annuity, and compute interest upon every such payment at *five per cent.*; and the plaintiff paying to the annuitant what should be found due upon the balance of the said accounts, it was ordered, that satisfaction should be entered upon the judgment, and the annuity and the policy of insurance be re-assigned. 5 Ves. 633.

NOTICE.

For the Forms of Notices of intention to repurchase, &c. see *post*, Vol. 6, tit. NOTICE.

RELEASE AND RECONVEYANCE ON REPURCHASE, &c.

*RELEASE *of an* ANNUITY *on a* REPURCHASE *and* ASSIGNMENT *of the* TERM, *to the Intent that they may respectively* MERGE, *either where the Repurchase Money is paid at the Time, or has been previously paid:* or ASSIGNMENT *to keep the Annuity and Term on Foot,* IN TRUST *for the Grantor:* or ASSIGNMENT *of Part of the Lands comprised in the Term, and Assignment of the Judgment to enable the Grantor to sell part of his Lands freed from the Annuity and Judgment:* or REASSIGNMENT *of Leaseholds,* or RECONVEYANCE *of Freeholds, freed from the Trusts for securing the Annuity.*

Parties.

THIS INDENTURE made the —— day of ——, 18—; BETWEEN [*grantee*], of, &c. (*a*) of the first part;

To convey or release a married woman's annuity, charged on a freehold for her own or another's life, a fine is requisite.

(*a*) If a married woman be entitled to an annuity, by way of rent-charge, granted out of a *freehold* interest, either in fee or in tail, or for her own life, or for the life of another person, she should be a party to the release with her husband, in order to declare the uses of a fine *sur conuzance de droit come ceo, &c.* or *sur concesserunt*, which they should levy of the rent-charge, *ut ante*, Vol. 1, p. 640. Or they should join in a fine of the lands out of which the rent-charge issues, with a declaration that the fine was levied with an intent to bar the rent-charge. *Heliot* v. *Saunders*, Cro. Jac. 699; *Taylor* v. *Shaw*, Carter, 24; *Whitfield* v. *Fausset*, 1 Ves. 390: Pres. Shep. Touch. 11. S. P. *Sed vide* Plowd. Com. 435, g. Therefore if a fine be requisite for any other purpose, an additional fine to convey the rent-charge would be unnecessary. (Mr. Belt, Supp. to Ves. 170 (4), citing *Goodright*, dem. *Hare* v. *Board*, Cru. on Fines, 252, 2d ed.; 5 Cru. Dig. 272, 2d ed.; appears to have totally mistaken the meaning of Lord Mansfield.) So if the rent-charge be in fee, or for life, and the husband and wife join in suffering a recovery of the land, out of which the rent issues, it would extinguish the rent. But as recoveries do not operate by estoppel

A fine of lands by one entitled to a rent in fee, in tail, or for life charged on them, will bar the rent.

A recovery of lands by one entitled to a rent in fee, or

*[*trustee*], of &c. of the second part; and [*grantor*], of &c. of the third part (*b*). WHEREAS by indenture, &c.

RELEASE AND RECONVEYANCE ON REPURCHASE, &c.

against the issue, or those in reversion or remainder, a recovery suffered of the lands will not bar an *intail* of a rent issuing out of the lands, as far as the issue or those in remainder or reversion are interested therein; although it would, by estoppel, bind the interest of the tenant in tail who suffered it. 1 Pres. Conv. 6. But if the rent-charge be a chattel interest, as for years determinable on a life or lives, a fine is unnecessary, as the husband alone may convey or release it. So if a married woman be entitled to an annuity granted for a life or lives, out of a *chattel real*, whether it be limited to her heirs, or to her executors, it seems that a fine is unnecessary. *Vide Butt's case*, 7 Co. 25, a.; *ante*, Vol. 1, p. 618, 629, *post*, p. 350 (*i*). So, it seems, that if it be a personal annuity for life or lives, limited to a married woman, her executors, &c. a fine would not be necessary. *Vide* Vol. 1, p. 628. But if a personal annuity, for life or in fee, be limited to a married woman and her heirs, it seems that a fine would be necessary. However, it has been said that a fine cannot be levied of an annuity; Shep. Touchs. 11; because it is only a personal inheritance, although granted in fee. 5 Cru. Dig. 152, 2d edit. But according to 2 Roll. Abr. 15 (G), pl. 1, a fine may be levied of an annuity upon a writ of covenant. See also Com. Dig. *Fine*, (E. 2.) "Agreeable to an elaborate opinion of Mr. Hargrave, and on principle, a fine may be levied of mere personal annuity on a writ of annuity." Pres. Shep. Touch. 11. And it is apprehended that the judgment on a writ of annuity will bind the interest of the parties, and even of a married woman; 1 Pres. Conv. 270; whether the annuity be in fee, for life, or though it be but for years. F. N. B. 152, A; Finch's Law, 301, edit. Pickering; Co. Litt. 144 (b). "Mr. Hargrave, observed, the balance upon authorities appears to him to be much in favour of the application of fines to annuities; and he concluded that a married woman, with her husband, might levy a fine of a mere personal annuity, which was the interest of the wife." Indeed there appears to be no other method whereby a married woman can prevent the descent to her heirs of a personal annuity limited to them. For a personal annuity cannot be barred as a rent may, by suffering a recovery; *ante*, Vol. 1, p. 587; because that is a *real* action. Dr. and Stud. Dial. 1, c. 30, p. 89, 18th edit. *Turner* v. *Turner*, 1 Bro. C. C. 319. But of this kind of inheritance a husband is not entitled to be tenant by the curtesy, nor a wife to be endowed. Co. Litt. 144, b; *ante*, Vol. 1, p. 580; 2 Wooddes. Lect. 72.

for life out of them, will extinguish the rent: but a recovery of the lands will not bar an intail of a rent charged on them.

But if a rent-charge be for years or for life, derived out of a chattel real, or a personal annuity be limited to executors, a fine is unnecessary.

A fine seems requisite to convey a married woman's personal annuity for life, or in fee, limited to her heirs.

Whether a fine may be levied of a personal annuity on a writ of covenant or on a writ of annuity.

No curtesy or dower of a personal annuity.

(*b*) If it be intended to keep the annuity and term on foot, in trust for the grantor, *vide* Vol. 1, p. 423—4, 433.

ASSIGNMENT IN TRUST FOR GRANTOR.

RELEASE AND RECONVEYANCE ON REPURCHASE, &c.

(*recite grant of annuity* "for and during the life of the *said [*grantor*]"; *and demise to trustee*, ut ante, *Vol.* 1, 421, *&c.*) (*c*) AND WHEREAS (*d*) the said [*grantor*], hath

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Recital of contract for repurchase.

(*c*) The bond should be cancelled and delivered to the grantor, *vide ante*, p. 43; and the grantee should execute a warrant of attorney to acknowledge satisfaction on the judgment, and sign a satisfaction piece to be entered in the enrolment office, *ut post*, WARRANT OF ATTORNEY, &c. ON REPURCHASE, &c.

Bond, judgment, and memorial, should be vacated.

PARTIAL ASSIGNMENT.

(*d*) If it be only an assignment of part of the lands comprised in the term, and an assignment of the judgment to enable the grantor to sell part of his lands free from annuity and judgment, *vide* Vol. 1, p. 437.

PREVIOUS REPURCHASE.

If the annuity has been previously repurchased without taking a release, &c. at the time, say,

Recital of previous repurchase.

"AND WHEREAS the said [*grantor*], by virtue of the power contained in the said indenture, repurchased the said annuity or yearly rent-charge, on the —— day of ——, last past, and then paid unto the said [*grantee*] all arrears thereof, and also the sum of [*consideration money*] pounds in full, for the absolute repurchase of the same; as he the said [*grantee*] doth hereby admit and acknowledge; and of and from the same respectively, and every part thereof, doth acquit, release, and for ever discharge the said [*grantor*], his heirs, executors, and administrators, and every of them, by these presents: *And* thereupon the said recited indenture was delivered up to the said [*grantor*]; but no actual release or surrender of the said annuity or yearly rent-charge, or of the said hereditaments and premises, comprised in the said term of ninety-nine years, was then, or hath been since, made or executed by the said [*grantee*] and [*trustee*] respectively. [AND WHEREAS the said [*grantor*] hath applied to and requested the said [*grantee*] to grant and release the said annuity, or yearly rent-charge of [*annuity*] pounds, and the said [*trustee*] to assign and surrender the hereditaments and premises comprised in the said term of ninety-nine years, in manner hereinafter mentioned, which they the said [*grantee*] and [*trustee*] have consented and agreed to do accordingly.] NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for the considerations aforesaid, and also in consideration of

Recital of request to grantee and trustee to re-assign.

Testatum, where there has been a previous repurchase.

RELEASE AND RECONVEYANCE ON REPURCHASE, &c.

contracted and agreed with the said [*grantee*] for the repurchase of the said annuity, or yearly rent-charge of [*annuity*] pounds, at or for the price or sum of [*considera-***tion money*] pounds. AND WHEREAS all arrears of the said annuity or yearly rent-charge of [*annuity*] pounds, have been paid and discharged by the said [*grantor*], up to and including the day of the date of these presents, as the said [*grantee*] doth hereby admit, acknowledge, and declare. NOW THIS INDENTURE WITNESSETH that in pursuance of the said contract, and in consideration of the sum of [*consideration money*] pounds, of lawful money of Great Britain and Ireland, to the said [*grantee*] in hand paid by the said [*grantor*], at or before the sealing and delivery of these presents; the receipt whereof the said [*grantee*] doth hereby acknowledge, and doth admit the same to be in full for the repurchase of the said annuity, or yearly rent-charge; and of and from the same and every part thereof doth acquit, release, and for ever discharge the said [*grantor*], his heirs, executors, and administrators, and every of them by these presents; *He* the said [*grantee*], *hath* (*e*) granted, remised, released,

Recital that all arrears have been paid.

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First Testatum.

Grant and release of annuity to grantor tenant for life.

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the sum of ten shillings, of lawful money of Great Britain and Ireland, to the said [*grantee*] paid by the said [*grantor*], at or before the sealing and delivery of these presents; the receipt whereof is hereby acknowledged; *He* the said [*grantee*] *hath* granted, remised," &c. *ut supra.*

(*e*) There are two other modes of releasing an annuity, besides that here pursued.—1st. To "remise, release, and quit claim" *the annuity* to the grantor, without the word "grant;" which is proper where the legal estate *in the land* is clearly vested in the grantor, so that the annuity may merge. 2d. To "acquit, release, and discharge" the land, and the grantor in respect of it, from the payment of the annuity. But these modes are sometimes objected to, as they may extend to release other interests, which the annuitant may possibly have in the property. The above form is free from this objection; and although the legal estate in the land may not be in the grantor of the annuity, still by the operation of the word "grant," the annuity will vest in him, and his equitable estate be discharged from it. Sand. MS.

Other modes are sometimes adopted.

Advantages of the above form.

RELEASE AND RECONVEYANCE ON REPURCHASE, &c.

*and for ever quitted claim, *and* by these presents *doth* grant, remise, release, and for ever quit claim, unto the

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Another form.

Grant and release of annuity, to the intent to free the lands therefrom.

" *He* the said [*grantee*], *hath* granted, remised, released, and for ever quitted claim, *and* by these presents *doth* grant, remise, release, and for ever quit claim, unto the said [*grantor*], his heirs and assigns, THE said annuity, or yearly rent-charge of [*annuity*] pounds, granted (limited) or secured to him the said [*grantee*], by the said hereinbefore in part recited indenture of release, during the natural life of the said [*grantee*]; *To the intent* that the said [*grantor*], his heirs and assigns, and the said messuages, &c. in and by the said hereinbefore in part recited indenture of release granted and released and charged with the payment of the said annuity, or yearly sum of [*annuity*] pounds, may be for ever hereafter released and discharged therefrom; and of and from all powers and remedies for recovering and enforcing payment thereof; and of and from all and all manner of actions and suits, claims, demands, and pretensions whatsoever, for or on account thereof, or in any wise relating thereto."

The second form above referred to.

Release of the lands and grantor from payment of annuity.

" *He* the said [*grantor*] *hath* remised, released, and for ever quitted claim and discharged, *and* by these presents *doth* remise, release, and for ever quit claim and discharge, ALL and singular the aforesaid messuages or tenements, lands and hereditaments, mentioned and comprised in the hereinbefore recited indenture, and thereby charged with the payment of the said annuity or yearly sum of [*annuity*] pounds; *And also* the said [*grantor*], his heirs, executors, administrators, and assigns, his, their, and every of their lands, tenements, goods, and chattels, of and from the said annuity or yearly rent-charge of [*annuity*] pounds, and of and from all arrears, dues, and payments in respect thereof; and of and from all powers and remedies for the recovery of the same; and also of and from all actions, suits, accounts, reckonings, claims, and demands whatsoever, for or on account or otherwise in respect of the said annuity, or the arrears

said *[*grantor*], his heirs, executors, administrators, and assigns, ALL THAT the said annuity, or yearly rent-charge of [*annuity*] pounds, so granted and secured to the said [*grantee*], his executors, administrators, and assigns, for and during the (*g*) life of the said [*grantor*], in and by the said indenture recited as aforesaid: *And* all arrears and future payments thereof, with all powers of distress and entry, and all other remedies whatsoever for recovering the same: AND ALSO all the right, title, interest, trust, property, benefit, claim, and demand whatsoever, both at law and in equity, of him the said [*grantee*], of, in, to, or out of the said annuity, or yearly rent-charge, by virtue of the said indenture, or otherwise howsoever: *To the intent* that the same annuity, or yearly rent-charge, may be merged and extinguished in or consolidated with the freehold of the said hereditaments and premises, and to or for no other use, trust, intent, or purpose whatsoever. AND THE SAID [*grantee*] doth hereby for himself, his heirs, executors, and administrators, covenant and declare with and to the said [*grantor*], his heirs and assigns, that he the said [*grantee*] hath not at any time heretofore made, done, executed, or committed any act, deed, matter or thing whatsoever, whereby or by reason or means whereof the said annuity or yearly rent-charge, or any part thereof, is, can, shall, or may be impeached, charged, or incumbered, or in any way affected; or whereby or by reason or means whereof he the said [*grantee*] cannot or ought not to grant and release the said annuity or yearly rent-charge unto the said [*grantor*], in manner aforesaid, and according to the true intent and meaning of these presents. AND THIS INDENTURE FURTHER

RELEASE AND RECONVEYANCE ON REPURCHASE, &c.

All arrears and powers.

All right, &c.

To the intent that the annuity may merge.

Covenant by grantee of annuity that he has not incumbered.

Second Testatum.

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thereof, or of any part thereof respectively, or of any security given or executed for the same, or of any other matter or thing whatsoever relating thereto. AND THE SAID, &c. (*covenant by grantee that he has not incumbered.*)

(*g*) If for years, determinable, &c. say,

FOR YEARS DETERMINABLE.

"said term of ninety-nine years, determinable as aforesaid."

RELEASE AND RECONVEYANCE ON REPURCHASE, &c.

WITNESSETH, that for the consideration aforesaid, and also in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland to the said [*trus-*

[*334] **tees*] in hand paid by the said [*grantor*], at or before the sealing and delivery of these presents; the receipt whereof is hereby (respectively) acknowledged, *They* (or *He*) the said [*trustees*], at the request, and by the direction of the said [*grantee*], testified by his sealing and delivering these presents (*have* and each (and every) of them *hath* bargained, sold, assigned (*h*), surrendered, and released, *and* by these presents (*do* and each (and every) of them,) *doth* bargain, sell, assign, surrender, and release, unto the said [*grantor*], ALL THOSE the messuages or tenements, lands, hereditaments, and premises, comprised in the said term of ninety-nine years, with the rights, members, and appurtenances thereunto belonging, or in any wise appertaining: AND all the estate, right, title, interest, term and terms for years now to come and unexpired, property, claim, and demand whatsoever, both at law and in equity,

Surrender of term by one trustee, or by two, or more.

Parcels.

All the estate, &c.

REASSIGNMENT OF LEASEHOLD.

(*h*) If the premises be leasehold, and were assigned to the trustees for the whole term, say,

"transfer, and set over; *and* by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*grantor*], his executors, administrators, and assigns, ALL THOSE, &c. AND all the estate, &c. TO HAVE AND TO HOLD the same messuages or tenements, lands, and premises, with their and every of their appurtenances, unto the said [*grantor*], his executors, administrators, and assigns, henceforth, for and during all the residue and remainder now to come and unexpired of the said term of —— years; *Freed* and absolutely discharged of and from the trusts and purposes declared thereof in and by the said hereinbefore recited indenture of the —— day of ——, 18—; and of and from all claims and demands in respect thereof."

Habendum of leaseholds for remainder of term, freed from annuity.

RECONVEYANCE OF FEE.

If the fee was conveyed to the trustees, they should reconvey to the grantor, by lease and release, *ut ante*, Vol. 1, p. 655—657, *mutatis mutandis*. *Habendum*,

Habendum of freeholds, freed from annuity.

"TO THE USE of the said [*grantor*], his heirs, and assigns; *Freed* and absolutely discharged," &c. *ut supra*.

of him the said [*trustee*] (*or* them the said [*trustees*], (any) or either of them) of, in, to, or out of the same hereditaments and premises, and every or any part thereof, *under or by virtue of the said recited indenture, or otherwise howsoever (*i*): *To the intent* that the said term of ninety-nine years may be merged in or consolidated with the reversion or freehold of the same hereditaments and premises therein comprised; and to or for no other use, trust, intent, or purpose whatsoever (*k*). AND THE SAID [*trustee*] doth hereby for himself, his heirs, executors, and administrators, covenant and declare with and to the said [*grantor*], his heirs and assigns, that he the said [*trustee*] hath not at any time heretofore made, done, executed, committed, or willingly or knowingly suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof, the said messuages or tenements, lands, hereditaments, and premises respectively, hereby assigned, or otherwise assured, or intended so to be, or any part thereof, or the said term of ninety-nine years therein, are, is, can, shall, or may be conveyed, assigned, impeached, charged, or in any manner incumbered or affected. IN WITNESS (*l*), &c.

RELEASE, AND RECONVEYANCE ON REPURCHASE, &c.

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To the intent that the term may merge.

Covenant by trustee that he has not incumbered.

(*i*) An *habendum* in a surrender is informal. *Vide* Vol. 1, p. 438 (*a*).

Habendum in surrender informal.

(*k*) If there be two or more trustees, say,

"AND each of them the said [*two or more trustees*], so far as respects his own acts and deeds only, but not further or otherwise, doth hereby separately for himself and his heirs, executors, and administrators, covenant and declare with and to the said [*grantor*], his heirs and assigns, that they the said covenanting parties respectively have not at any time," &c. *ut supra*.

TWO OR MORE TRUSTEES.

Covenant by two or more trustees, that they have not incumbered.

(*l*) Stamp, *one pound fifteen shillings*, with progressive duty of *one pound five shillings*. For by the 55 Geo. 3, c. 184, s. 31, "the releases and other conveyances of annuities or rent-charges made in the original grant thereof, subject to be redeemed or repurchased, shall, on the repurchase thereof, be exempted from the *ad valorem* duty hereby imposed on conveyances on the sale of any property, and shall be charged only with the ordinary duty on deeds or instruments of the like kind, not upon a sale." According to the prevailing opinion, this exemption extends to conveyances on a repurchase of an annuity, *in trust* for the person repurchasing. *Vide* Vol. 3, p. 172.

Stamp.

Releases and conveyances of annuities, &c, exempted from the *ad volorem* duty on the repurchase.

SURRENDER OF COPYHOLDS, EXEMPLIFICATION OF TRUSTS, &c.

*Surrender *of* Copyhold *Estate, subject to a* Condition *making it void, on the due payment of an* Annuity, *or on* Repurchase; *either where the Estate belongs to a married Woman, or to a Customary Tenant in Fee, or for Life, and either where it is taken by the Lord, or Steward, or Customary Tenants, and is done in person, or by Attorney, with Forms of* Exemplification *on the Court Rolls of* Trusts *for Sale, &c.* (*a*).

Manor of Eling. } Be it remembered, that out of Court, on the —— day of ——, in the year of our Lord 18—, [*grantor*](*b*) of, &c. and [*Margaret*] his wife,

Practice.

(*a*) See an outline of the practice as to copyhold securities for annuities, Vol. 1, p. 563. The surrender should generally be actually made before the consideration money is paid, for the reason there stated; but more especially where the estate belongs to a married woman. *Vide* Vol. 1, p. 578 (*c*). [*Et vide post*, Vol. 5, p. 352.]

BY ATTORNEY.

(*b*) If the surrender be made by attorney, say,

" [*grantee*], of, &c, one of the customary tenants of the said manor, by [*attorney*], of, &c. his attorney, duly constituted by a certain deed-poll, under the hand and seal of the said [*grantor*], bearing date on or about the —— day of ——, 18—, which is exemplified on the court rolls of this manor, in consideration of the sum of [*consideration money*] pounds, of lawful money of Great Britain, by [*grantee*], of, &c. to the said [*grantor*] previously paid, (*or* to the said [*attorney*]†, as the agent of the said [*gran-*

Consideration paid to grantor's attorney.

† If the attorney receives the money there should be an express authority for that purpose in the power of attorney, which should also contain a declaration that his receipt shall be a sufficient discharge.

*(she the said [*Margaret*] being first examined apart from her said husband by (*c*) [*steward*], gentleman, steward of the said manor, and consenting,) in consideration of the sum of [*consideration money*] pounds of lawful money of Great Britain by [*grantee*], of, &c. to the said [*grantor*], in hand then well and truly paid, SURRENDERED into the hands of the lord of the said manor, by the rod, by the (*d*) hands and acceptance of the said (*e*) steward, ALL THAT messuage or tenement, with the cottages, lands, hereditaments, and premises thereunto belonging, situate and being at ——, within the said manor, and commonly called or known by the name of ——, with their and every of their rights, members, and appurtenances: which said hereditaments and premises descended to the said [*Margaret*], as the only child and customary heir of [*father*], late of, &c. deceased: AND ALSO all the estate, right, title, interest, property, claim, and demand whatsoever of them the said [*grantor*] and [*Margaret*] his wife, and each of them, of, in, to, or out of the said hereditaments and premises, and every part thereof: TO THE USE AND BEHOOF of [*trustee*], of, &c. his heirs and assigns (*f*), for

SURRENDER OF COPYHOLDS, EXEMPLIFICATION OF TRUSTS, &c.

To the use of trustee.

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tor], by virtue of a power contained in the said deed-poll, then well and truly paid) SURRENDERED into the hands of the lord of the said manor, by the rod, according to the custom of the said manor, by the acceptance of [*steward*], steward of the said manor, (*or* and by the personal acceptance of the lord,) ALL, &c.

(*c*) If the surrender be taken by the lord himself, say,

TAKEN BY THE LORD.

" the lord himself in person, and consenting," &c.

If the surrender be taken by two customary tenants, say,

TAKEN BY CUSTOMARY TENANTS.

" [*A. B.*] and [*C. D.*], two of the customary tenants of the said manor, and consenting," &c.

(*d*) " personal acceptance of the said lord, ALL," &c. BY THE LORD.

(*e*) " [*A. B.*] and [*C. D.*], ALL THAT," &c. BY CUSTOMARY TENANTS.

(*f*) If the grantor be tenant for life, say,

" for and during the natural life of the said [*grantor*], at," &c. FOR LIFE.

SURRENDER OF COPYHOLDS, EXEMPLIFICATION OF TRUSTS, &c.

ever at the *will of the lord, according to the custom of the said manor: *Nevertheless*, UPON CONDITION, that if the said (*g*) [*grantor*], and [*Margaret*] his wife, or either of them, or their or either of their heirs, executors, or administrators, should, from time to time, during the (*h*) natural life of the said [*grantee*], well and truly pay, or cause to

On condition.

FOR YEARS DETERMINABLE.

If for years determinable on the grantor's death, for the reasons stated, *ante*, Vol. 1, pp. 537, 538, and *ante*, p. 314(*d*), omit the clause of "ALL the estate," &c. and say,

"for and during the term of ninety-nine years, if the said [*grantor*] should so long live, at the will of the lord," &c. *ut supra*.

LIFE ESTATE.

(*g*) If the grantor has only a life estate in the copyhold, say,

For ninety-nine years, determinable on grantor's death.

"if the said [*grantor*] should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, for and during the term of ninety-nine years, if the said [*grantor*] should so long live, "*One*," &c. *ut supra; omitting in the surrender the clause for paying proportional part, but retaining it in the bond*, ut ante, Vol. 1, p. 461; *and also on the covenant*, ut ante, p. 147.

FOR YEARS DETERMINABLE ON GRANTEE'S DEATH;

(*h*) If for years determinable on the grantee's death, say,

"during the term of ninety-nine years, if the said [*grantee*] should so long live, well and truly pay, or cause to be paid, unto the said [*grantee*], or his assigns, *One*" &c. *ut supra*.

ON NOMINEES' DEATH.

If for years determinable on the deaths of nominees, say,

"during the term of ninety-nine-years, if [*nominees*], of, &c. (if any) either of them should so long live, well and truly pay or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, *One*," &c. *ut supra*.

An annuity *pour autre vie*, with ancillary trusts for securing it, by a conditional surrender of copyholds, may be limited to executors.

Other conditions of surrenders for securing annuities may be the same, *mutatis mutandis*, as the conditions of bonds for the same purpose, *ut ante*, Vol. 1, p. 467, &c. For as such an annuity as the above does not issue out of the copyhold lands, it being only a personal annuity, for which the surrender is an ancillary security, the objection stated, *ante*, Vol. 1, pp. 587, 596, as to the limitation of *rent-charges pour autre vie* to the grantee, his executors, administrators, and assigns, does not apply to this case. *Vide post*, p. 352.

be paid, unto the said [*grantee*], or his assigns, *One* annuity or clear yearly sum of [*annuity*] pounds of lawful money of Great Britain [and Ireland], to commence, or be considered as commencing, from the —— day of —— next preceding the date of the above surrender, by even and equal *payments, to be made half-yearly, on the —— day of —— and the —— day of ——, in every year, clear of all deductions on any account whatsoever; *And* should make the first payment of the said annuity on the —— day of —— next ensuing the date hereof; provided the said [*grantee*] should be then living: *And* in the event of the death of the said [*grantee*], between or in the interval of any of the said half-yearly days of payment, and either before or after the said —— day of —— next, if the said [*grantor*] and [*Margaret*] his wife, or either of them, or their or either of their heirs, executors, or administrators, should well and truly pay, or cause to be paid unto the executors, administrators, or assigns of the said [*grantee*], such part of the said annuity of [*annuity*] pounds, as shall be in proportion to the time or number of days which, inclusive of the day of the decease of the said [*grantee*], shall have elapsed prior to his decease, and after the day of payment next and immediately preceding that event, or as the case shall require, next after the —— day of [*commencement*] last, if the said [*grantee*] should die prior to the [*first*] day of [*payment*] next: And if the said [*grantor*] and [*Margaret*] his wife, or either of them, or their or either of their heirs, executors, or administrators, should pay such proportional part of the said annuity of [*annuity*] pounds, as soon after the decease of the said [*grantee*], as demand shall be made thereof by the executors, administrators, or assigns of the said [*grantee*], and clear of all deductions whatsoever: Or, if the said [*grantor*] and [*Margaret*] his wife, or either of them, or their or either of their heirs, executors, or administrators, should, at any time after the expiration of three years, to be computed from the said —— day of [*the commencement*] last, be desirous of repurchasing the said annuity of [*annuity*] pounds; and should give the said [*grantee*], or his assigns, three calendar months' notice in

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*writing of such his or their desire; and should, upon the expiration of the said notice, or at any time afterwards, upon giving three calendar months' such notice as aforesaid, well and truly pay, or cause to be paid, unto the said [*grantee*], or his assigns, the sum of [*original purchase money*] pounds of lawful money of Great Britain; and also all and every sums and sum of money which shall be then due for or on account of the arrears of the said annuity of [*annuity*] pounds, and also a proportional part of the same annuity, up to and inclusive of the day of repurchasing the same; and all sums of money, if any, which shall be then due, for or on account of any costs, charges, or expenses occasioned by the nonpayment of the said annuity; *Then*, and in either of the said cases, the above surrender to be void and of no effect, otherwise to be and remain in full force and effect (*i*). AND (*j*) it was previ-

Reference to grant.

Distress and entry not given.

(*i*) A power of distress is not usually given on copyhold premises, *ante*, Vol. 1, p. 625; a power of entry cannot be given, *ante*, Vol. 1, p. 628.

Generally desirable to have the trusts inserted in the surrender but they may be omitted.

The steward has a right either to have the trusts inserted, or entirely omitted.

(*j*) It is generally desirable to have the trusts, as well as the condition, inserted in the surrender, and consequently on the court rolls. *Vide* Vol. 1, p. 563 [but see *post*, Vol. 5, p. 362]. However, if the parties do not wish it, the trusts may be omitted. Sometimes the trusts are referred to in the surrender, thus, "Upon such trusts, &c. as are declared in a certain indenture," &c. without mentioning them. But it would be wrong in the steward to receive such a surrender, for he has a right to call for a specification of the trusts, or to refuse that any reference whatever shall be made to them on the court rolls. See *Kensington* v. *Mansell*, 13 Ves. 244.

[It has lately been decided, that the mortgagee of a copyhold, whose surrender was made out of court, did not lose priority by neglecting for a long period to have it enrolled, the custom not prescribing any definite period for the enrolment. The facts were as follow:—*A.*, in 1790, made a conditional surrender to *B.* to secure £1000 and interest. On the 10th of December, 1792, the homage presented the surrender to the steward for enrolment, *but it was not then enrolled.* In 1800, *A.* died, and his heir, in 1808, sold to *C.*, who was admitted; on the 3d of May, 1815, *C.* surrendered the property to secure the annuities to *D.*, and the trustees were admitted on the 28th of February, 1824. *On the 18th of June, 1820, the surrender presented in December, 1792, was again presented, and, on the 15th of May, 1823, B. was admitted under it.*

ously to the said surrender, agreed and declared between and by the said [*grantor*] and [*Margaret*] his wife, and the said [*grantor*] and [*trustee*], in and by a certain indenture, bearing date on or about the —— day of ——, 18—, and made between the said [*grantor*] and [*Margaret*] his wife, of the first part, the said [*grantee*], of the second part; and the said [*trustee*], of the third part (*k*); that the said [*trustee*], his heirs and *assigns, should stand [*341] seised and be possessed of the said hereditaments and premises so surrendered to him and them as aforesaid. UPON (*l*) THE TRUSTS, and to and for the *intents and [*342]

SURRENDER OF COPYHOLDS, EXEMPLIFICATION OF TRUSTS, &c.

It was contended, that under these circumstances *B.*'s mortgage ought to be postponed to *C.*'s purchase and *D.*'s annuities; but the court held, that as there was by the custom of the manor no limited time for presenting surrenders made out of court, the mortgagee was not bound to have his conditional surrender presented until it suited his convenience, and therefore the mortgage to *B.* was the primary charge. *Hollock* v. *Priestley*, 2 Sim. 75. (As to precedence among Incumbrancers, *vide post*, Vol. 5, pp. 408, 429, 479.)]

(*k*) The above trusts seem to be generally preferable, because they meet the circumstances of the case, as well before as after the condition of the surrender is broken, and whether the surrenderee be or be not admitted: for in some manors the lord may compel his admission. *Vide* Vol. 1, p. 565. But the forms in the above respect are various; sometimes the following is used;

"that in case default should be made in payment of the said annuity or yearly sum of [*annuity*] pounds, according to the condition of the said surrender, then he the said [*trustee*], his heirs and assigns, should hold and be seised and possessed of the hereditaments and premises hereby surrendered, UPON THE TRUSTS, and to and for the intents," &c. *ut supra.*

Trusts on breach of condition,

In which case add the exemplification of the trusts, &c. thus:

"UPON TRUST, by and out of the rents," &c. "or by mortgage or sale," &c. *ut ante*, Vol. 1, p. 538.

to raise annuity out of the rents, or by sale, &c. trusts, &c.

(*l*) If the trusts be declared by reference to those declared of freehold lands, &c. say,

TRUSTS BY REFERENCE.

"UPON, under, and subject to the same, or the like trusts, provisions, regulations, declarations, and agreements, as

to trusts of a term for one thousand years;

SURRENDER OF COPYHOLDS, EXEMPLIFICATION OF TRUSTS, &c.

purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, thereinafter expressed and declared of and concerning the same; and that the said [*grantor*] should, so far as in him lay, cause such declaration of trust to be inserted upon the rolls of this manor, for the better preserving and evidencing the same: NOW THEREFORE, on the prayer of the said [*grantor*] and [*Margaret*] his wife, and with the consent of the said [*grantee*] and [*trustee*], the declaration of trust contained in the said indenture is, by the favour of the lord, thus enrolled:

Exemplification on the court rolls of

trusts for sale after forty days default in payment.

"UPON TRUST, to permit and suffer the said [*grantor*] and [*Margaret*] his wife, and the heirs and assigns of the

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are therein expressed and declared, of and concerning a certain term of one thousand years † in the freehold lands and hereditaments thereby demised, or as near thereto as might be, and the nature of the estate of the said [*trustee*,] his heirs or assigns, would admit."

In which case add the exemplification of the trusts, &c. thus:

"UPON TRUST, that in case," &c. *ut ante*, p. 142.

or of a life estate in remainder.

Or if it be of a life estate in remainder, by reference to previous trusts, *ut ante*, p. 119.

Where a trustee of a term for securing an annuity has taken possession, although all arrears be afterwards paid, equity will only order possession to be given up on such terms as will enable him to resume it the moment the annuity is again in arrear.

† Where a trustee of a term of years, upon the usual trusts for securing annuities, has taken possession of the estates under the trusts, although all arrears of the annuities may afterwards be paid, a court of equity will not order possession to be given up to the grantor, except upon such terms as will enable the trustee to resume it, and to receive the rents, the moment the annuities are again in arrear, without the necessity of bringing an ejectment: and therefore in the interim the grantor, or his agents, to receive the rents and profits in the names of the trustee and the annuitant, or one of them, and the receipts to be given accordingly; and the grantor to be at liberty to use the names of the trustee and annuitant, or either of them, in making or supporting distresses for rent upon the tenants of the estates; the grantor indemnifying the trustee and annuitant, and each of them, from all costs and damages by reason or in consequence of such distresses. *Jenkins* v. *Milford*, 1 Jac. & Walk. 629.

said [*Margaret*], to receive," &c. *ut ante*, Vol. 1, p. 551, to *the words, page* 555, " without his or their wilful default." *Varying the form if the estate be the wife's property*, ut ante, Vol. 1, pp. 578—9.

SURRENDER OF COPYHOLDS, EXEMPLIFICATION OF TRUSTS, &c.

TAKEN (*m*), the day and year first above written, by me,

E. F. } Lord of the said Manor.

or G. H. } Steward of the said Manor.

or by us A. B. C. D. } Two of the customary tenants of the said Manor.

To be signed here by the grantor and his wife, where the estate belonged to her; by grantee, and by the trustee.

If by attorney, *John Doe* by *Richard Roe*, his attorney.

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(*m*) By the 55 Geo. 3, c. 184, tit. CONVEYANCE, (p. 1572), *" Where *upon the sale of any annuity or other right not before in existence*, the same shall not be created by actual grant or conveyance, but shall only be secured by bond, warrant of attorney, covenant, contract, or otherwise; the bond, or other instrument by which the same shall be secured, or some one of such instruments, if there be more than one, shall be deemed and taken to be liable to the same duty, as an actual grant or conveyance." When there is a conditional surrender of copyholds, to become absolute on nonpayment of an annuity, the annuity does not issue out of the estate; *vide ante*, p. 338; nor is it created by actual grant or conveyance; and therefore either the bond, warrant of attorney, or deed of covenant, may be stamped with the *ad valorem* duty, at the election of the parties. See the fourth subsequent provision of the act. And where copyhold or customary lands or hereditaments are charged together with other property for securing the same annuity, under the abovementioned provisions, and the provisions of the act, p. 1590-1, the whole *ad valorem* duty should be charged on the deed relating to the other property. In all which cases the copyhold surrender should be on a *one pound* stamp: and if with the trusts, &c. the surrender should contain thirty folios or upwards, then for every entire quantity of fifteen folios contained therein, over and above the first fifteen folios, a further *progressive* duty of *one pound* (pages 1575-6). However, it is proper to

Stamp.

When not secured by actual grant or conveyance, any of the securities may be stamped with the *ad valorem* duty.

Where copyholds are charged with other property, the deed relating to the other property should be stamped with the *ad valorem* duty.

Where the *ad valorem* duty is

SURRENDER OF COPYHOLDS, EXEMPLIFICATION OF TRUSTS, &c.

charged on some collateral security, the surrender should be on a 1*l.* stamp, with progressive duty of 1*l.*

apprise the reader, that under a previous part of the act (page 1571), it has been supposed, that the surrender, or the memorandum thereof, if made out of court, or the copy of court roll of the surrender, if made in court, is to be deemed the principal instrument, where it is made subject to a condition to become absolute on nonpayment of an annuity. But as that part of the act is qualified by the abovementioned express provisions, it seems that the construction alluded to is erroneous. The object of the legislature appears to have been, to secure an immediate payment of the *ad valorem* duty; but the covenant to surrender might never be performed, and indeed frequently the surrender is not made for months afterwards, and sometimes not at all: in which case the revenue would be defrauded.

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WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

WARRANT OF ATTORNEY *to confess Judgment in any of the Courts of Westminster, or in Ireland, either with or without a Bond, and either with or without a Surety; and* DEFEAZANCE *to a Warrant of Attorney for securing an* ANNUITY, *with power on default in payment, either to take out execution for the Arrears, or for the whole Debt confessed, and after paying the Arrears to invest the Residue of the Money levied, in the Three per Cents. to answer the future Payments of the Annuity.*

To [*A. B. C. D.*] and [*E. F.*], gentlemen, attornies of his Majesty's Court of (*a*) King's Bench (*b*), at Westminster, jointly and severally, or to any other attorney of the same court.

THESE are to desire and authorize you the attornies above-named, or any one of you (*c*), or any other attorney of

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COM. PLEAS. (*a*) "Common Pleas, at," &c. *ut supra.*

EXCHEQUER. "To *A. B.* &c. *(naming the four attornies of the Court of* Exchequer, *whose names are always mentioned in the law list,)* attornies of his Majesty's Court of Exchequer, at Westminster, jointly and severally."

IRELAND. (*b*) "In Ireland, jointly," &c. *ut supra.*

EXCHEQUER. (*c*) "or any one of you, to appear for me," &c. *ut supra.*

WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

In King's Bench, [*345] during term, in an action of debt with a bond.

the court of (*d*) King's Bench aforesaid, to appear for (*e*) me *[*grantor*] (*f*), of ——, in the county of ——, in the said court (*g*) as of this present —— term, or any other subsequent term, and then and there to receive a declaration for (*h*) me, in an action of debt (*i*) for [*double the consideration money*] pounds, [for money borrowed], at the suit of [*grantee*], of ——, in the county of ——, his executors or administrators; and thereupon to confess the same action, or else to suffer a judgment by *nil dicit*, or

(*d*) "Common Pleas, aforesaid," &c. *ut supra.* COM. PLEAS.

(*e*) If there be a surety, say, SURETY.

"us [*grantor*], of, &c. and [*surety*], of, &c. either jointly or severally, in the said court," &c. *ut supra.*

A joint warrant will not authorize a judgment against one.

A warrant of attorney to appear for *us*, and to receive a declaration for *us*, in an action of debt upon a *joint and several* bond, will not authorize the entering up judgment against one alone, although the other be dead. The words of the authority must be pursued. *Gee* v. *Lane*, 15 East, 592. [*Raw* v. *Alderson*, 1 J. B. Moore, 145. But a judgment may be entered up in favour of surviving *plaintiffs*. *Fendall* v. *May*, 2 Mau. & Selw. 76.] Or, if the parties think fit, there may be distinct warrants of attorney, *ut post*, 362. [As to the advantage of this, *vide* Vol. 5, p. 484.]

[(*f*) Where a person executes a warrant of attorney by a wrong name, execution is properly taken out against him by that name. *Reeves* v. *Slater*, 7 Barn. & Cress. 486. See also *Coke* v. *Brummell*, 2 J. B. Moore, 495; *post*, p. 665.]

(*g*) "As of —— term last, —— term next, or any other subsequent term," &c. *ut supra.* GIVEN IN VACATION.

(*h*) "Us, either jointly or severally, in an action," *ut supra.* SURETY.

In the other instances alter the form to the plural number.

(*i*) "In an action of debt, on a bond or obligation, bearing even date herewith, and made and entered into by me the said [*grantor*], to [*grantee*], of, &c. in the penal sum of [*double the consideration money*] pounds, at the suit of the said [*grantee*], his executors or administrators; and thereupon," &c. *ut supra.* ON BOND.

A bond seems to be an unnecessary expense, when there is a covenant. *Vide post*, p. 360-1.

WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

otherwise, to pass against me(*k*) in the same action; and to be thereupon forthwith entered up against me(*l*) of record of the said court, for the said sum of [*double the consideration money*] pounds, besides costs of suit(*m*). AND I

Authority to release errors.

(*k*) "Us."

(*l*) "Us."

(*m*) See as to warrants of attorney, *post*, Vol. 5, pp. 235, 487, and INDEX TO THE NOTES. But here the reader should be apprised of the beneficial alteration respecting warrants of attorney, made by the late

3 Geo. 4, c. 39.

statute 3 Geo. 4, c. 39, intituled, "*An Act for preventing Frauds upon Creditors by secret Warrants of Attorney to confess judgment;*" which received the royal assent 24th June, 1822, reciting, "Whereas, injustice is frequently done to creditors by secret warrants of attorney to confess judgments *for securing the payment of money*, whereby persons in a state of insolvency are enabled to keep up the appearance of being in good circumstances, and the persons holding such warrants of attorney have the power of taking the property of such insolvents in execution at any time, to the exclusion of the rest of their creditors: For remedy whereof" it is enacted, "that from and after the twenty-ninth day of September next, if the holder thereof shall think fit, every warrant of attorney to confess judgment in any personal action, or a true copy thereof, and of the attestation thereof, and the defeazance and indorsements thereon, in case such warrant of attorney shall be given to confess judgment in his Majesty's Court of King's Bench at Westminster, or such a true copy thereof as aforesaid, in case such warrant of attorney shall be given to confess judgment in any other court, shall, within twenty-one days after the execution of such warrant of attorney, be filed, together with an affidavit† of the time of the execution thereof, with the clerk of the dockets and judgments in the said Court of King's Bench."‡

After 29th September, 1822, warrants of attorney in personal actions to be filed within 21 days; with an affidavit of the time of the execution thereof.

Where a commission of bankrupt shall issue against the person giving a warrant of attorney, the warrant shall be deemed fraudulent and void, unless the same shall have been filed, or judg-

II. "And that from and after the said twenty-ninth day of September next, if at any time after the expiration of twenty-one days next after the execution of such warrant of attorney, a commission of bankrupt shall be issued against the person who shall have given such warrant of attorney, under which he shall be duly found and declared a bankrupt, then and in such case, unless such warrant of attorney, or a copy thereof, shall have been filed as aforesaid, within the said space of twenty-one days from the execution thereof, or unless judgment shall have been signed, or execution issued on such warrant of attorney,

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† See a form, *post*, p. 360.

‡ The office is in the middle of a low building at the bottom of the King's Bench Walks, Inner Temple.

*the said [*grantor*] do hereby further authorize and empower you the said attornies, or any one of you, after the

WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

within the same period, such warrant of attorney, and the judgment and execution thereon, shall be deemed fraudulent and void against the assignees under such commission, and such assignees shall be entitled to recover back and receive, for the use of the creditors of such bankrupt at large, all and every the monies levied, or effects seized under and by virtue of such judgment and execution."

ment or execution issued within 21 days.

III. And reciting, "whereas the object of the said provision may be defeated by any person giving a *cognovit actionem* instead of a warrant of attorney to confess judgment;" it further enacted, "that every *cognovit actionem*, given by any defendant in any personal action, in case the action in which such *cognovit actionem* shall be given shall be in the said Court of King's Bench, or a true copy of such *cognovit actionem* in case the action wherein the same is given shall be in any other court, shall, together with an affidavit of the time of the execution thereof, be filed with the said clerk, in like manner as such warrants of attorney, or copies thereof and affidavits, within the space of twenty-one days after such *cognovit actionem* shall have been executed, otherwise such *cognovit actionem*, and any judgment entered up thereon, and any execution taken out on such judgment, shall be deemed fraudulent and void against the assignees of the person giving such *cognovit actionem*, under a commission of bankrupt issued against him, after the expiration of the said space of twenty-one days, in like manner as warrants of attorney, and judgments and executions thereon, are deemed and taken to be fraudulent and void by this act."

Every *cognovit actionem* to be filed in like manner, or void against creditors.

IV. "And that if such warrant of attorney or cognovit shall be given subject to any defeazance or condition, such defeazance or condition shall be written on the *same* paper or parchment on which such warrant af attorney, or *cognovit actionem*, shall be written, before the time when the same, or a copy thereof respectively, shall be filed, otherwise such warrant of attorney, or *cognovit actionem*, shall be null and void to all intents and purposes."†

Defeazance of every warrant of attorney or cognovit to be written on the same paper.

[† This clause has been held only to extend to the warrants of attorney mentioned in the preceding sections, and therefore not to make them void except as against assignees in bankruptcy. As against all other persons, including of course an assignee under the Insolvent Debtors' Act, they are good, though the defeazance be on a separate piece of paper. *Morris* v. *Mellin*, 6 Barn. & Cress. 446. But the late Insolvent Debtors' Act (7 Geo. 4, c. 57, s. 33,) extends the provisions of this act to assignees of insolvents.]

Act does not invalidate warrants of attorney except as against assignees in bankruptcy.

WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

*said judgment shall be entered up as aforesaid, for me and in my name, and as my act and deed, to sign, seal,

Officer of court to keep a book, containing particulars of each warrant of attorney and cognovit.

V. "And that the said officer of the said Court of King's Bench shall cause every warrant of attorney and *cognovit actionem* in any personal action, and every copy thereof, filed in his said office, to be numbered, and shall keep a book or books in his said office, in which he shall cause to be fairly entered an alphabetical list of every such warrant of attorney or cognovit, containing therein the names and additions and descriptions of the respective defendants or persons giving such warrants of attorney or cognovits, and also the names, additions, and descriptions of the plaintiff or persons in whose favour the same shall have been given, together with the number and the dates of the execution and filing of the same, or of a copy thereof respectively, and the sums for which judgment is to be entered up, and also the sums which are specified to be paid by the defeazances or conditions in each warrant of attorney or *cognovit actionem*, and the times when the same are thereby made payable; which said book or books, and every warrant of attorney and *cognovit actionem*, or copy thereof, filed in the said office, shall be searched and viewed by all persons at all seasonable times, paying to the officer for every search against one person, the sum of *sixpence*, and no more."

Fee of 1s. for filing warrants of attorney and cognovits.

VI. "And that the said officer shall be entitled to receive, for his trouble in filing and entering such warrant of attorney or cognovit, or a copy thereof as aforesaid, the sum of *one shilling*, and no more."

Office copies to be given, on paying the usual rates for copies of judgments.

VII. "And that any person shall be entitled to have an office copy of each warrant of attorney or *cognovit actionem*, or of the copy thereof, filed as aforesaid, upon paying for the same at the like rate as for office copies of judgments in each of such courts respectively."

Satisfaction may be entered on warrants of attorney and cognovits.

VIII. "And that it shall be lawful for any of the judges of the court in which such warrant of attorney or *cognovit actionem* is given, to order a memorandum of satisfaction to be written upon such warrant of attorney, *cognovit actionem*, or copy thereof respectively, as aforesaid, if it shall appear to him that the debt for which such warrant of attorney or *cognovit actionem* is given as a security shall have been satisfied or discharged."

[In a late case, where a bond, upon the face of it, appeared to be conditioned for the payment of a certain sum; but by an indenture of the same date, declaring the purposes for which the bond was executed, it was agreed, that it should be lawful for the obligees in the bond to commence an action, and to proceed to judgment whenever they should think fit; and upon judgment being obtained, to issue execution; and that the judgment should be a security for the payment to the obligees,

and *execute a good and sufficient release in the law to the said [*grantee*], his heirs, executors, and administrators, of all and all manner of error and errors, writ and writs of error, and all benefit and advantage thereof, and all misprisions of error and errors, defects and imperfections whatsoever, had, made, committed, done, or suffered, in, about, touching, or concerning the aforesaid judgment; or in, about, touching, or concerning any writ, warrant, process, declaration, plea, entry, or other proceedings whatsoever, of or any way concerning the same. WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

And for what you the said attornies, or any one of you, shall do, or cause to be done in the premises, or any of them, this shall be to you and every of you a sufficient warrant and authority. General warrant.

In witness whereof I have hereto set my hand and seal, the —— day of —— in the —— year of the reign of our sovereign lord George the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland King, defender of the faith; and in the year of our Lord one thousand eight hundred and —— Testimonium.

SEALED AND DELIVERED, being first duly stamped, (*n*) in the presence of [*witness*], of, &c. } [*grantor*] L. S.

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on demand, of all sums of money which then were, or might thereafter, become due to them. A judgment having been entered up by virtue of this deed, the obligees issued execution; it was held, that this indenture was in effect a *cognovit actionem*, within the meaning of the third section of the statute, or if not, that it was a contrivance to defeat its provisions, and not having been filed within twenty-one days, as required by the statute, the court at the instance of the assignees (in bankruptcy) of the obligor, ordered the execution to be withdrawed. *Hurst* v. *Jennings*, 5 Barn. & Cressw. 650.]

(*n*) The stamp is *one pound* where the *ad valorem* stamp has been affixed to some collateral security; but where it has not, the warrant of attorney should have the same stamp as a grant of an annuity. 55 Geo. III. c. 184, Sched. part I. titles, Conveyance, and Warrant of Attorney, and Sched. part II. Stamp.

DEFEAZANCE INDORSED ON WARRANT OF ATTORNEY.

*DEFEAZANCE (*a*) *to be indorsed on a Warrant of Attorney for securing an* ANNUITY.

[*grantee*] v. [*grantor*]. } MEMORANDUM that the (*b*) within written warrant of attorney (*c*) is given as a security collaterally with an indenture bearing even

Collateral se-

A defeazance to a warrant of attorney must be written on it, or a memorandum indorsed containing the substance.

(*a*) By a rule of all the Courts, 1 Tidd's Prac. 563, 7th ed.; 2 East, 136; Impey's Prac. 515, 9th ed. K. B.; 3 Bos. & Pul. 310. C. P.; Man. Exch. Append. 225, Exch.; "every attorney and side clerk in the office of Pleas of the Exchequer, or other person who shall prepare any warrant of attorney to confess judgment, which is to be subject to any defeazance, must cause such defeazance to be written on the same paper or parchment on which the warrant of attorney is written; or cause a *memorandum* in writing to be made on such warrant of attorney, containing the substance and effect of such defeazance." In the construction of this rule, it has been determined, that if the attorney employed to prepare a warrant of attorney to confess judgment, which is

An attorney who neglects it, is guilty of a breach of duty.

DEFEAZANCE UNDER WARRANT.

(*b*) The above seems to be the most usual form; but sometimes the defeazance is written immediately under the warrant of attorney; in which case, say,

"the above written warrant of attorney, is," &c. *ut supra.*

DEFEAZANCE INCORPORATED WITH WARRANT.

And sometimes it is incorporated with the warrant of attorney, and brought in after the general warrant, thus:

"THIS warrant of attorney is given," &c. *ut supra;*

in which case say, in the other instances,

"this warrant of attorney;"

and then both the grantor and grantee should execute it.

ON BOND.

(*c*) If there be a bond also, say,

"and the within (*or* above) mentioned bond or obligation are given as securities collaterally," &c. *ut supra.* *Vide post*, p. 360-1.

*date herewith, and made between the within named [*grantor*] of the first part (*d*), the within named [*grantee*] of the second part, and [*trustee*], of ——, in the county of ——, of the third part, for securing an annuity or yearly sum of [*annuity*] pounds, which (*e*) hath been granted or secured by the said [*grantor*] unto the said [*grantee*] (*f*), his executors, administrators, and assigns,

DEFEAZANCE INDORSED ON WARRANT OF ATTORNEY.

curity for an annuity for ninety-nine years, determinable on grantor's death.

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to be made subject to a defeazance, neglect to insert such defeazance in the warrant, the security is not thereby avoided against the innocent party; but the attorney is guilty of a breach of duty imposed on him by the Court, and answerable for it on motion. *Shaw* v. *Evans*, 14 East, 576; *Partridge* v. *Fraser*, 7 Taunt. 307; *Partridge* v. *Herbert*, 1 Moore, 54, S. C.; but see the 3 Geo. 4, c. 39, s. 4, *ante*, p. 346; and, by the above rule of all the courts, "no judgment can be signed upon any warrant, authorizing an attorney to confess judgment, without such warrant being delivered to and filed by the clerk of the dockets, or master in the Exchequer; who is ordered to file the warrants in the order in which they are received." Therefore, where a warrant of attorney is filed for the purpose of having judgment signed, it is generally prudent for the grantee previously to have a fair copy of the warrant of attorney and defeazance. But in order to make a warrant of attorney valid in case of bankruptcy, under the 3 Geo. 4, c. 39, s. 1, it is sufficient to file a copy of it with the defeazance, &c. whether the judgment is to be confessed in the King's Bench or in any other court.

and the defendant may move the court against him.

When a judgment is to be signed, the original warrant of attorney must be filed in the office:

therefore the grantee should previously have a copy.

It is sufficient to file a copy, to make it valid in case of bankruptcy.

(*d*) If there be a surety,

SURETY.

"the within named [*surety*], of the second part," &c. *ut supra.*

(*e*) "is thereby covenanted to be paid by the said [*grantor*], his (*or* [*grantor*], and [*surety*] their) heirs, executors, or administrators, to the said [*grantee*], his executors, administrators, and assigns, for the term," &c. *ut supra.*

BY COVENANT.

As a wife, surviving her husband, is not subject to a distress for an annuity charged by him on her term for years, he should assign the term, *ut ante*, pp. 27, 47; or make an underlease, *ut ante*, p. 307, upon trusts for securing the annuity. *Vide* Vol. 1, pp. 337, 615, *ante*, pp. 52, 55.

Husband should assign or underlease his wife's term for years.

(*f*) The form of the defeazance must be adapted to the circumstances of the case, and should be conformable to the proviso in the deed or bond.

DEFEAZANCE INDORSED ON WARRANT OF ATTORNEY.

for the term of ninety-nine years, if the said [*grantor*] should so long live; and the considerations (*g*) advanced *and given for the purchase of the said annuity, was the

[*351] sum of [*consideration money*] pounds, paid to the said [*grantor*] by the said [*grantee*], in notes of the Governor and Company of the Bank of England, payable to bearer on demand, immediately before the execution of the said indenture. (*h*) AND the said annuity of [*annuity*] pounds, is payable, and to be paid by the said [*grantor*] his heirs, executors, or administrators, unto the said [*grantee*], his executors, administrators, or assigns, from the date of the said indenture for and during the said term of ninety-nine years, if the said [*grantor*] should so long live (*i*), at or in the common dining hall of Lincoln's Inn,

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CONSIDERATION A CONVEYANCE.

(*g*) If the annuity be granted in consideration of an absolute conveyance of an estate, say,

"for the purchase of the said annuity, is a conveyance and surrender, made or to be made by the said [*grantee*] to the said [*grantor*], his heirs and assigns, of certain freehold and copyhold messuages, lands, and hereditaments, of him the said [*grantee*], situate in the parish of ——, or elsewhere, in the county of ——. AND the said annuity," &c. *ut supra.*

In which case a memorial in Chancery is not requisite. *James* v. *James*, 2 Brod. & Bing. 702; *S. C.* 5 J. B. Moore, 479; *ante*, Vol. 1, p. 335, (*p*).

SURETY.

(*h*) If there be a surety, add,

"AND the said [*surety*] joined in a covenant contained in the said indenture, and also in † the within (*or* above) written (*or* this) warrant of attorney, at the instance and request, and as the surety for the said [*grantor*], for the due payment of the said annuity. AND the said annuity," &c. *ut supra.*

Limitation of annuities.

(*i*) With respect to the limitation of annuities, or rent-charges, *vide ante*, p. 184, (*c*); and Vol. 1, p. 628, 629.

A rent-charge

Mr. Preston says, "Annuities by way of rent-charge are frequently

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BOND.

† If there be a bond, add,

"the said bond, and in"

*in the county of Middlesex, by equal quarterly payments, to be made on the —— day of ——, the —— *day of

DEFEAZANCE INDORSED ON WARRANT OF ATTORNEY.

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granted to a person and his *heirs* for a life or lives, instead of being granted for *years*, determinable with the decease of a person, or the decease of the survivor of several persons. When such annuity is derived out of, and depends on *a freehold interest*, the annuity will, on intestacy, be transmissible, and belong to *heirs* and not to *executors* or administrators: at least such is the opinion entertained on mature deliberation. But every annuity granted out of a chattel interest will be a *chattel interest*, although it be limited to the grantee and his heirs for a *life or lives*. An interest which in its nature is a chattel *real* cannot be rendered transmissible to heirs." Litt. s. 740; 1 Pres. Abs. 446; 1 Com. Dig. 244, s. 35; and see *Butt's case*, 7 Co. 25, a; *ante*, Vol. 1, pp. 621, 629.

pour autre vie, limited to the grantee and his heirs, will on intestacy belong to them. *Ante*, Vol. 1, p. 588. It should be limited to the grantee, his executors, &c. for years, if, &c.

An annuity out of a chattel real limited to heirs, will belong to the executors.

But a personal annuity, that is, where it is not charged on lands, but only secured by grant, bond, or covenant, or bequeathed by will, may be limited to a man and his heirs in fee; F. N. B. 152, A.; Finch's Law, 301, ed. Pickering, *ante*, Vol. 1, p. 580; *Smith* v. *Pybus*, 9 Ves. 574, 575: or *quasi* in tail, as a fee simple conditional at common law, to become absolute and alienable on having issue; an annuity, in the proper sense of the word, not being within the statute *de donis*, and consequently of it, there can be no remainder limited. *Turner* v. *Turner*, 1 Bro. C. C. 324, 319; Ambl. 782; 5 Bro. Par. Cas. 435, S. C. Or such a personal annuity may be limited to a man and his heirs *pour autre vie*, *Savery* v. *Dyer*, Ambl. 140, *ante*, Vol. 1, p. 593. And in all these cases the personal annuity may be alienated either by the ancestor or his heir; 9 Ves. 574; or by husband and wife, entitled to it in right of the wife, *ut ante*, p. 329; but if not alienated it will descend to the heir. *Ante*, Vol. 1, pp. 583, 588, 628; 9 Ves. 575.

A personal annuity may be limited to the grantee and his heirs in fee; or *quasi* in tail;

or *pour autre vie*,

And if not aliened, will descend to the heir.

Where there is an ancillary security, or (according to Lord Hardwicke's expression, *ante*, Vol. 1, p. 593,) a supplemental fund to arise from real estate, for payment of a personal annuity *pour autre vie*, originally granted or bequeathed to the grantee or legatee alone, (*ante*, Vol. 1, pp. 593, 594,) or to him, his executors, administrators, and assigns, (*ibid.* p. 628,) it seems that the capability of its devolution to the personal representatives is not thereby prevented; such as a conveyance of freeholds, or a conditional surrender of copyholds in fee, upon trusts for sale in case of default in paying the personal annuity *pour autre vie*, where the annuity is not charged on the lands; and, consequently, in such a case, the objection stated *ante*, Vol. 1, p. 587, would be inapplicable. So likewise it seems that the descent of a personal annuity to heirs, whether limited to the grantee and his heirs in

An ancillary security arising from real estate, for paying a personal annuity *pour autre vie*, will not prevent its going to executors.

An ancillary security arising from a chattel

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——, the —— day of ——, and the —— day of ——, in every year, between the hours of two and four in the afternoon of the same days respectively: free from taxes, and without any other deduction whatsoever: The first quarterly payment of the said annuity, to become due and be made on the —— day of —— now next ensuing, provided the said [*grantor*] should be then living: *And* in the event of the death of the said [*grantor*], during the said term of ninety-nine years, and between or in the interval of any two of the said quarterly days of payment,

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real for paying a personal annuity in fee, &c. will not prevent its descent to heirs.

fee, or *quasi* in tail, or *pour autre vie*, would not be prevented, although there be from a chattel real an ancillary security for payment of the personal annuity; such as an assignment of leaseholds, or a demise for years, upon trusts for sale, in case of default in paying such a personal annuity before the expiration of the term for years.

Personal annuities of inheritance are not common, because the heirs and executors are only answerable so far as they have assets.

Personal annuities of inheritance are not common in modern times. For if *A.* grant, that he and his heirs (*vide* Vol. 1, p. 584,) will pay a yearly sum to *B.* and his heirs, which forms an annuity in fee, or covenant or give a bond that he and his heirs will pay such an annuity, the heirs of the grantor will not in law or reason be liable to this demand, unless they inherit from their ancestor, who created it, real assets, that is, descendible lands or hereditaments sufficient for that purpose. Co. Litt. 144, b.; 2 Wooddeson's Lect. 75. But the executors or administrators will be bound so far as they have assets, whether they are named or not. Dyer, 14, pl. 69; Co. Litt. 209 a; Wms. n. 2 Saund. 137 a; Noy's Max. 200, 233, 241, 9th edit. And it seems that a Court of Equity would compel the personal representatives of the grantor, so far as they have assets, to set aside such a sum as would be sufficient to answer the personal annuity for ever; but the annuitant would have the absolute disposition of the fund so set aside. *Smith* v. *Pybus*, 9 Ves. 574. And as to the personal representatives of an heir, who had real assets by descent from the ancestor who created the personal annuity, it seems therefore to follow that a Court of Equity would compel them to set aside so much of the heir's personal estate, as would be sufficient to answer the personal annuity, so far as the value of the real assets descended to the heir would extend. Still it is not a charge upon the land, but only on the person of the heir, in respect to his having real assets; and as to the personal representatives, only in respect to the personal assets, if they have any, and then only so far as they will extend. If annuities of inheritance, therefore, were more common, it is obvious, they in general would probably be of short duration. They serve, however, to illustrate the principles and distinctions of our law.

It seems a Court of Equity would compel the executors to set aside assets, to answer the annuity; but the annuitant may dispose of the fund.

and either before or after the said —— day of —— next, then such part of the said annuity of [*annuity*] pounds, as shall be in proportion to the time, *or number of days which, inclusive of the day of the decease of the said [*grantor*], shall have elapsed prior to his decease, and after the day of payment next and immediately preceding that event, or as the case shall require, next after the day of the date of the said indenture, to be paid by the heirs, executors, or administrators, of the said [*grantor*], immediately after the decease of the said [*grantor*], and demand made thereof. AND [it is by the said indenture declared and agreed, by and between the parties thereto, and] *it is* [*also*] *hereby declared and agreed*, that no execution or executions shall be issued or taken out upon the said judgment, [to be entered up under the within (*or* above, *or* this) warrant of attorney,] unless or until the whole, or a part of some quarterly payment of the said annuity of [*annuity*] pounds, shall be in arrear by the space of twenty-eight days: AND ALSO that in case the said annuity should at any time be in arrear by the space of twenty-eight days (*k*), then and in such case, and so often

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Declaration that no execution shall issue, until annuity be in arrear.

Power to sue out execution for the arrears.

(*k*) If it be the agreement, omit the above clause, and insert the following, beginning with the word "then;" or retain both, and after the words, "or any part thereof," *supra*, p. 355, insert the following, thus,

" or if upon any such default in payment as aforesaid, the said [*grantee*], his executors, administrators, or assigns, should prefer so doing,"

" then execution shall or may be sued for the whole of the said sum of [*double the consideration money*] pounds, and the sum to be so levied shall be applied in payment of the arrears of the said annuity, and the costs, charges, and expenses of and attending the levying the same; *And* the surplus shall be held IN TRUST, that the said [*grantee*], his executors, administrators, or assigns, do and shall invest the same surplus in the purchase of three per centum consolidated Bank Annuities, in his or their name or names, and stand and be possessed of the same Bank Annuities, and the dividends, interest, and income thereof, IN TRUST to answer and pay the said annuity of [*annuity*] in trust to an-

Power to sue execution for the whole debt confessed;

and after paying arrears, &c. surplus to be held in trust to be invested in three per cents.

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*from time to time as the same shall happen, it shall and may be lawful for the said [*grantee*], his executors, administrators, or assigns, to sue out such execution or executions upon or by virtue of the said judgment, as he or they shall think fit or be advised, for the recovery of the arrears of the said annuity of [*annuity*] pounds, and all costs, charges, damages and expenses which he the said [*grantee*], his executors, administrators, or assigns, or any of them, shall bear, pay, sustain, or be put unto, for or by reason or means of the non-payment of the same annuity, or any part thereof. (*l*) AND ALSO, that after the deter-

After end of

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swer future payments; the residue to be in trust for grantor.

pounds, when and as the same shall become due; *And* subject thereto, do and shall stand and be possessed of the same three per centum consolidated Bank Annuities, and the dividends, interest, and income thereof, IN TRUST for the said [*grantor*], his executors, administrators, and assigns."†

Proviso dispensing with necessity to revive judgment seems unnecessary.

(*l*) Some gentlemen insert here the usual provision, that it shall not be necessary to revive the judgment; but it appears to be unnecessary in the defeazance. Indeed it seems unnecessary in any of the securities, since it has been determined, that a warrant of attorney to confess judgment, whether on bond or not, is not within the statute 8 & 9 W. 3, c. 11, s. 8, which requires suggestions of breaches, and the *scire facias*. See 2 Tidd's Prac. 1142, 7th edit. 2 Archbold's Prac. 12.

As to the necessity of a *scire facias* to revive judgments to secure annuities.

[The author has here fallen into the error of supposing that the necessity of reviving a judgment by *scire facias* arises from the statute of William the Third, which is not the case. The stat. Westminster, 13 Ed. 1, c. 45, declared that the plaintiff should have a writ of execution "forthwith," if levied "within the year," and enabled him to have execution *after* that period by suing out a writ of *scire facias;* and this writ is still necessary in every case, after the lapse of a year, unless dispensed with by agreement. A clause therefore to the following effect should be inserted,

"And also that it shall not be necessary for the said [*grantee*], his executors or administrators to issue any

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[† If a demand is, by the terms of the defeazance, made requisite previously to the issuing of an execution, (which ought always to be avoided, if possible,) it must be distinctly made, and a proposal to the defendant to settle amicably does not amount to such a demand. *Nicholl* v. *Bromley*, 5 J. B. Moore, 397.—*Note by Mr. B.*]

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mination of the said term of ninety-nine years, and full payment to the said [*grantee*], his executors, administrators, or assigns, of the said annuity of [*annuity*] pounds, and the proportional part thereof, and all arrears thereof up to the determination of the said term of ninety-nine years, and of all such costs, charges, damages, and expenses as aforesaid; he the said [*grantee*], his executors, administrators, or assigns, shall or will, on the request, and at the costs and charges of the said [*grantor*], his heirs, executors, administrators, or assigns (*m*), acknowledge satisfaction on the said judgment, upon the record thereof, in due form of law; and do any further or other act, matter, or thing, which may be reasonably required for releasing and extinguishing all right and remedy under the said judgment, and all executions there-*upon; *So* as for doing thereof the said [*grantee*], his executors, administrators, or assigns, shall not be compelled or compellable to travel from the place or places of his or their then residence or abode (*n*). And also, that

term and full payment, satisfaction to be acknowledged.

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writ or writs of *scire facias*, or do any other act or acts for reviving the said judgment, or for keeping the same on foot, although no proceeding or proceedings shall have been taken or had thereon for the space of one year immediately preceding the issuing of such execution,"

In the case of *Morris* v. *Jones*, 3 Dowl. & Ryl. 263, 603; S. C. 2 Barn. & Cress. 243; it was contended that an agreement to this effect was nugatory; but the Court observed, "If a party chooses to bargain that execution shall issue on an old judgment without reviver, we cannot say that such a bargain is so unlawful as to justify us in setting aside the *elegit*."

Agreement to dispense with *scire*.

(*m*) If there be a surety, add,

SURETY.

"or of the said [*surety*], his heirs, executors, administrators, or assigns."

(*n*) If the annuity be granted in consideration of an absolute conveyance of an estate, the defeazance will terminate here.

CONSIDERATION A CONVEYANCE.

For the form of the bond, *vide ante*, Vol. 1, p. 496; and for the grant, &c. *ante*, p. 137.

Where a man sells an estate for an annuity, without any agreement being made respecting the security to be given for it, he is entitled to have it secured, not only upon the estate, but also by the bond of the

A vendor of an estate in consideration of an annuity, is enti-

DEFEAZANCE INDORSED ON WARRANT OF ATTORNEY.

*in case the said [*grantor*] (*o*) or his assigns should, at any time after the expiration of three years, to be computed

tled to have it secured on the estate, and by a bond and judgment.

purchaser, and a judgment to be entered up against him. *Remington* v. *Deverall*, 2 Anstr. 550. In *Ker* v. *Clobery*, V. C. 27 Mar. 1819, Sug. Vend. 225, 6th ed., which came before the court upon a petition between the heir and executor, it appeared that the equity of redemption was sold to the mortgagee for the mortgage money, and a life annuity to be paid to the seller and his wife, and the survivor of them; but nothing was said as to the mode in which the annuity was to be secured. It was held to be a purchase of the equity of redemption, subject to the annuity, which ought to be charged on the estate. It

If an estate be sold for a life annuity, and the nominee die before the estate is conveyed, yet the purchaser is entitled to a conveyance.

was an interest reserved by the seller out of the estate. It follows, from the general rule of equity, by which that which is agreed to be done is considered as actually performed, Francis's Maxims of Equity, XIII.; 1 Fonbl. Treat. Equity, 419, 5th ed.; *ante*, Vol. 1, p. 86 (*n*), that if a person agree to give a contingent consideration for an estate, as an annuity for the life of the vendor, and the vendor die before the conveyance is executed, by which event the annuity ceases, yet the purchaser will be entitled to a specific performance of his contract. Sug. Vend. 246, 6th ed. Thus in the case of *Mortimer* v. *Capper*, 1 Bro. C. C. 156, *A.* contracted to sell an estate to *B.* for 200*l.* and 50*l.* a year annuity; and two days after the contract was reduced into writing *A.* was found drowned; the Lord Chancellor directed an enquiry as to the value of an annuity for the life of *A.*, in order to introduce the question, whether an estate being disposed of for an annuity, which is a contingency, the contract shall fall to the ground, if no payment of the annuity shall be made. He said, that he thought if the price were fair, the contract ought not to be cut down, merely because the annuity, which was a contingent payment, never became payable. The parties in the above cause were so well satisfied with the opinion of the court, that they never, it is said, brought it back for further directions. 3 Bro. C. C. 609; and see *Wyvill* v. Bishop of *Exeter*, 1 Price, 292. So in a later case, *Jackson* v. *Lever*, 3 Bro. C. C. 605, where *A.* sold an estate by auction in consideration of a life annuity, the first payment

SURETY.

(*o*) If there be a surety, add,

"or the said [*surety*], his heirs, executors, administrators, or assigns, any or either of them, should," &c. *ut supra.*

If there be a surety or sureties, the form should be varied in other respects according to the agreement. See, as to one surety, Vol. 1, p. 428; two sureties, pp. 513, 635.

*from the day of the date of the within (*or* above) written (or this) warrant of attorney, be desirous of repurchasing

DEFEAZANCE INDORSED ON WARRANT OF ATTORNEY.

to be made on the 25th December, 1787; but in case he should die before the 29th of September, 1787, up to which time he was to receive the rents, the contract should be void. *A.* died on the 1st of February, 1788, after a sudden and short illness of only two days; and owing to some delays, the conveyances were not executed. The quarter's payment, due at Christmas, was tendered to the vendor's agent by the purchaser, a few days after it became due; but the agent declined receiving it, saying, that the conveyance would be soon completed, and that it was not necessary for the purchaser to make such payment in the mean time. On the first hearing, Lord Thurlow said, he did not see, that if an annuity was contracted for, why the consideration should not be paid. It was, he said, objected, that the contract could not be carried into execution *modo et forma*, and that had great weight where there had been no payment. His lordship afterwards made his decree for a specific performance, on payment of the arrears of the annuity, the consideration for the purchase of the estate. The case of *Paine* v. *Mellor*, 6 Ves. 352, bears on this point also. Lord Eldon, in delivering judgment, said, that as to the annuity cases, and all others, the true answer had been given; that the party has the thing he bought, *though no payment may have been made*; for he bought subject to contingency. And in the later case of *Coles* v. *Trecothick*, 9 Ves. 246, his lordship said, it has been held upon true principles, that if a man contracts to sell an estate for a life annuity, if the contract is signed, and the party to have the annuity died before the end of the first half year, the court must execute the contract.

But if an estate be sold for life annuity, and a payment becomes due before the death of the nominee, and the purchaser neglect to make or tender it, he cannot then insist on a specific performance.

But if in a case of this nature, a payment of the annuity become due before the death of the vendor, and the purchaser *neglect to make or tender it*, he cannot insist on a specific performance. This was decided by the case of *Pope* v. *Root*, 7 Bro. P. C. 184. *A.* contracted with *B.* for the sale of an estate to him, in consideration of a life annuity, and the completion of the agreement was delayed by the illness of a mortgagee, who was to have been paid off. Two days after the time mentioned for completing the purchase, *A.* met with an accident, and died within a few days. By the terms of the contract, the first payment of the annuity became due previously to the death of *A.*, but it was not paid or tendered. And Lord Chancellor Bathurst dismissed the bill for a specific performance, and the decree was affirmed in the House of Lords. See Lord Bathurst's decision in *Baldwin* v. *Boulter*, 1 Bro. C. C. 166, cited.

The reader will observe, that the decision in the cases of *Mortimer*

DEFEAZANCE INDORSED ON WARRANT OF ATTORNEY.

the said annuity of [*annuity*] pounds, and should give to the said [*grantee*], his executors, administrators, or assigns, or leave at his or their usual place of residence or abode, three calendar months' notice in writing of such his or their desire; and upon the expiration of the said notice, or at any time afterwards, and upon three calendar months' such notice as aforesaid, should well and truly pay, or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, the sum of [*original purchase money*] pounds of lawful money of Great Britain; and also all and every sum and sums of money which shall be then due and owing to the said [*grantee*], his executors, administrators, or assigns, for or on account of the said annuity of [*annuity*] pounds, and also a proportional part of the same annuity, up to and inclusive of the day of paying the same; and all * sums of money, if any, which shall be then due, for or on account of any costs, charges, or expenses occasioned by the nonpayment of the said annuity, *Then* the said [*grantee*], his executors or administrators, shall, at the costs and charges of the said [*grantor*], deliver up the above written warrant of attorney, (if not filed), to be cancelled, or acknowledge satisfaction on the judgment (or judgments) if any should be entered up

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v. *Capper*, and *Jackson* v. *Lever*, do not infringe upon that of the House of Lords, in the prior case of *Pope* v. *Root*, but reduce the rules on this subject to an equitable and uniform standard; for the only case in which a purchaser cannot require the assistance of equity, is where he has by laches forfeited his right to its aid; namely, where a payment of the annuity became due, and he neglected to pay or tender it. Sug. Vend. 249, 6th ed.

Should be declared, that nominee's death before conveyance, shall not vacate contract.

To obviate all doubt, it seems advisable, in agreements for purchase, where the consideration is an annuity for the life of the vendor, to expressly declare, that the death of the vendor, previously to the completion of the contract, shall not put an end to it, although a payment of the annuity shall not have become due, or having become due, shall not have been made or tendered; but that unless a payment shall have become due, and after demand in writing made thereof in the vendor's life time, shall have remained unpaid at his decease, the purchaser shall be entitled to a conveyance, on payment of the annuity up to the death of the vendor.

by virtue of the said warrant of attorney (*p*). As WITNESS our hands, the day and year within written. *(To be signed by the grantee and grantor.)*

DEFEAZANCE INDORSED ON WARRANT OF ATTORNEY.

WITNESS.

(*p*) A defeazance upon a warrant of attorney does not require an additional stamp. *Cawthorn* v. *Holben*, 1 New Rep. C. P. 279.

No stamp on defeazance.

Judgment may be signed, although default has not been made in payment;

unless the contrary be stipulated.

Judgment may be entered up on a warrant of attorney at the time therein specified; and although the warrant of attorney be given to secure the payment of money at a future time, it is not necessary to delay signing judgment until default in payment; MS. M. 1814; and see *Anonymous*, Hardw. 270, ed. Lee; unless that delay be expressly required by the defeazance. *Staines* v. *Planck*, 8 Durnf. & East, 386. Where a warrant of attorney is given to secure the payment of an annuity, or of money by instalments, or the like, it is prudent, and indeed usual, to docket the judgment immediately; 2 Archbold's Prac. 15, 17; [as the judgment creates a debt notwithstanding the defeazance. *Ex parte Groome*, 1 Atk. 117]. For the judgment must be entered on the roll, docketed, and carried to and filed in the treasury of the court—1, in order to bind the defendant's lands—2, to enable the plaintiff to bring debt or *scire facias* on the judgment—3, or to charge the defendant in execution—4. or to proceed against the bail on their recognizance—5, in case a writ of error is brought—and 6, in order to bind assets in the hands of the executor or administrator of the defendant. 1 Archb. Prac. 206. Also, in order to bind lands in Middlesex or Yorkshire, it is necessary to file a memorial of the judgment in the registry office of such counties respectively, before which the lands will not be affected or bound by the judgment. See the form, *post*, Vol. 5, p. 230.

For what purposes it is requisite to enter &c. the judgment.

In Middlesex or Yorkshire judgment should be registered.

AFFIDAVIT OF EXECUTION OF WARRANT OF ATTORNEY.

*AFFIDAVIT *of the Time of the* EXECUTION *of a Warrant of Attorney to confess Judgment, previously to its being filed, in pursuance of the 3 Geo. 4, c. 39, s. 1.*

IN THE KING'S BENCH, (*or*
COMMON PLEAS, *or*
EXCHEQUER OF PLEAS.)

[*Witness*], of, &c. maketh oath and saith, that he was present at the time of the signing and sealing of the warrant of attorney (*a*) hereunto annexed: AND that [*gran-*

COPY TO BE FILED.

(*a*) If the warrant of attorney be to confess judgment in the King's Bench, and the original is not intended to be filed until it is requisite to be done, (under the rule of court, *ante*, p. 350,) for the purpose of signing judgment;† or if the warrant of attorney be to confess judgment in the Common Pleas, or Exchequer, add,

" a true copy whereof, and of the attestation whereof, and

Judgment may be entered up either on a bond or without it.

Where there is no covenant there should be a bond

A bond seems to be unnecessary where there is a covenant.

† *Vide ante*, p. 359. A judgment may be as effectually entered up on a warrant of attorney at any time whether there be or be not a bond; but where there is no covenant for paying an annuity, a bond should also be taken. Yet where there is a covenant, a bond also seems to be an unnecessary expense; for the grantee may prove for the value of the annuity, in case of the grantor's bankruptcy, or receive a dividend in case of his insolvency, whether it be secured by bond *or* covenant, or by bond *and* covenant; *ante*, Vol. 1, pp. 472, 479. And such a covenant, if under seal, creates a debt by specialty, *ante*, p. 75, which will rank equally with debts on bond. *Parker* v. *Harvey*, 11 Vin. Abr. 292, pl. 39; 3 Bac. Abr. Gwill. ed. 81. And it seems that under such a covenant, by the Statute of Fraudulent Devises, 3 W. & M. c. 14, an action of debt may be maintained against a devisee of the covenantor, as well as against the heir, when he is named; *ante*, p. 353; the annuity being a sum certain. *Wilson* v. *Knubly*, 7 East, 137; 1 Tidd's Prac. 4, 7th ed. [By a bill lately introduced into Parliament by Sir E. B. Sugden, (but which has not yet passed into a law,) it was proposed to subject the devisees of a covenantor to an action of *covenant* as well as an action of debt.] However, there are very few annuity transactions in which it would be prudent to omit taking a warrant of attorney to confess judgment. [But see observations, *post*, Vol. 5, pp. 235, 487.]

There should always be a judgment.

*tor], of, &c. therein mentioned, did, on the —— day of ——, 18—, the day of the date hereof, duly sign, seal, and as his act and deed deliver the said warrant of attorney, in the presence of this deponent: AND that the name [*grantor*], set and subscribed to the said warrant of attorney, is of the proper handwriting of the said [*grantor*]: AND that the name [*witness*], set and subscribed as the witness thereto, is of the proper handwriting of this deponent.

AFFIDAVIT OF EXECUTION OF WARRANT OF ATTORNEY.

[*witness*].

SWORN in court, (*or if the court be not mentioned at the top of the affidavit*, "in the Court of King's Bench, *or* Common Pleas, *or* Exchequer,) at Westminster Hall, the —— day of ——, 18—.
By the court.

Jurat of affidavit when sworn in court.

When the affidavit is sworn before a judge or baron, the *jurat* is as follows:

When sworn before a judge or baron.

SWORN at my chambers, in Serjeants' Inn, Chancery Lane, (*or* "at my house at ——," *or wherever else the affidavit may be sworn*,) the —— day of ——, 18—, before me.
[*Judge*].

When sworn before a Commissioner, authorized to take affidavits by the statute 29 Car. 2, c. 5, it is thus:

When sworn before a commissioner.

SWORN (*b*) at ——, in the county of ——, the —— day of ——, 18—, before me —— a commissioner.

(*or, if the court be not mentioned at the top of the affidavit*, "a commissioner for taking affidavits in the court of ——."

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the defeazance and indorsements thereon, are hereunto annexed: AND that," &c. *ut supra*.

(*b*) The names of the several deponents must be inserted in the *jurat* of the affidavit. 2 Chit. Rep. 19. *Aliter*, in the Exchequer. 2 Price, 1.

SEPARATE WARRANT OF ATTORNEY BY A SURETY, WITH DEFEAZANCE.

*WARRANT OF ATTORNEY *to confess* JUDGMENT *by a* SURETY, *for payment of an* ANNUITY *collaterally secured by a Charge on a Benefice, to Trustees for an Insurance Company, with a* DEFEAZANCE *by reference to the Defeazance contained in the Grant, and herein recited.*

TO —— attornies of his Majesty's Court of King's Bench, at Westminster, jointly and severally, or to any other attorney of the same court.

Recital of contract for the purchase of an annuity by trustees for an insurance company, to be charged on a benefice.

WHEREAS the Reverend [*grantor*], clerk, rector of —— in the county of ——, hath contracted and agreed (*a*) with [*trustees*], of, &c. (as trustees for the society or partnership called "The Globe Insurance Company,") for the sale to them, at or for the price or sum of [*consideration money*] pounds, of one annuity of [*annuity*] pounds, for the term of ninety-nine years, if he the said [*grantor*] should so long live, to be secured not only

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Agreement for sale of an annuity decreed several years after, where the consideration money had been paid, but the lives had not been named, the delay being occasioned by the grantor.

(*a*) Where upon a contract for sale of an annuity to be charged on lands, the investigation of the grantor's title having occupied some time, the grantee advanced the consideration money immediately upon the security of a promissory note, and a deposit of the title deeds, with a memorandum of the agreement for purchasing the annuity, which was to commence from the time of paying the consideration money, and to continue for three lives, to be named by the grantee; a specific performance was decreed several years afterwards, although the lives had not been named; the delay having been occasioned by the grantor, who positively refused to perform his agreement; but the grantee was directed to nominate the lives of persons who were in existence at the time of the contract. *Pritchard* v. *Ovey*, 1 Jac. & Walk. 396. [See also *Lord Kensington* v. *Phillips*, 5 Dow, 60.]

upon the rectory, glebe lands, tithes, and hereditaments charged therewith, by the indentures hereinafter mentioned, but also (amongst other things) by the warrant of attorney *of the undersigned [*surety*,] of, &c. esquire, (who at the request of the said [*grantor*] hath agreed to become his surety for the payment of the same annuity,) and a judgment to be entered up in pursuance thereof in his Majesty's Court of King's Bench at Westminster, as of —— term last, or some subsequent term, in an action against him the said [*surety*], at the suit of the said [*trustees*], or the survivors or survivor of them; or the executors or administrators of the survivor of them, for the sum of [*double the consideration money*] pounds, for money borrowed, and costs of suits (*b*). And on the treaty for the purchase of the said annuity, it was agreed, that all the expenses of preparing and perfecting the securities for the same, and of enrolling a memorial thereof in the High Court of Chancery, should be borne by the said [*grantor*]. And whereas the said [*grantor*], in pursuance of the said agreement, and in consideration of the sum of [*purchase money*] pounds of lawful money of Great Britain, to him in hand paid by the said [*trustees*], at the time of the sealing and delivery of the said indenture, and of these presents, (which sum of [*consideration money*] pounds was the proper money of the said society or partnership, and was so paid by the said [*trustees*] as aforesaid, on the behalf of the said society or partnership,) *Hath*, by indenture, bearing even date herewith, given, granted, sold, and confirmed unto the said [*trustees*], their executors, administrators, and assigns, *One* annuity, or clear yearly sum of [*annuity*] pounds of lawful money of Great Britain, to be paid and payable for and during the term of ninety-nine years, to commence from the day next before the day of the date of the said indenture, and of these presents, and thenceforth next ensuing and fully to be complete and ended, *if* the said [*grantor*] should so long live, at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, by equal quarterly payments; that is to say; the —— day of ——, &c. in every year, without any de-

SEPARATE WARRANT OF ATTORNEY BY A SURETY, WITH DEFEAZANCE.

And to be secured amongst other things by surety's warrant of attorney to confess judgment.

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Recital of grant of annuity to trustees for insurance company.

(*b*) *Vide* Vol. 1, p. 460, (*b*).

SEPARATE WARRANT OF ATTORNEY BY A SURETY, WITH DEFEASANCE.

duction or abatement whatsoever; the first quarterly payment of the said annuity to be made on the —— day of —— next ensuing the day of the date of the said indenture, and of these presents, if the said [*grantor*] should then be living; *and if the said [*grantor*] should depart this life during the said term of ninety-nine years, and between or in the interval of any two of the said quarterly days of payment, and either before or after the said [*first*] day of [*payment*] next, then such part of the said annuity of [*annuity*] pounds, as should be in proportion to the time or number of days which, inclusive of the day of the decease of the said [*grantor*], should have elapsed prior to his decease, and after the day of payment next and immediately preceding that event, or as the case should require, next after the day of the date of the said indenture, and of these presents, to be paid to the said [*grantee*], his executors, administrators, or assigns, immediately after the decease of the said [*grantor*], and demand made thereof. And by the said indenture it is declared, that the judgment intended to be entered up in pursuance of these presents, is intended and agreed to be a further security to the said [*trustees*], their executors, administrators, and assigns, for the said annuity of [*annuity*] pounds; *And* that no execution or executions shall be issued or taken out upon the said judgment, unless and until the same annuity, or some part thereof, shall be in arrear by the space of forty-five days; *and* the said [*trustees*] their executors, administrators, and assigns, are thereby authorized, when and so often as the same annuity, or any part thereof, shall be so in arrear for forty-five days, to sue out such execution or executions upon the said judgment, for the recovery of the arrears of the said annuity, and all costs, charges, and expenses, if any, which they shall sustain, or be put unto, by reason of the nonpayment thereof, as they shall think fit: *And* by the said indenture the said [*trustees*] have covenanted for and on the behalf of the said society or partnership, with the said [*grantor*], that if he the said [*grantor*] should be minded and desirous of repurchasing the said annuity, at any time hereafter, (*recite the power to repur-*

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With proportional part.

Recital of defeasance to surety's warrant of attorney.

Recital of power to repurchase.

chase.) NOW THEREFORE these are, in pursuance of the above mentioned agreement, and for the further securing the said annuity or yearly sum of [*annuity*] pounds, to desire and authorize you, the attornies above named, or any one of you, or any other attorney of the Court of King's Bench aforesaid, to appear for the said [*surety*], as of —— term last, or some subsequent term, and then and *there receive a declaration for the said [*surety*], in an [*365] action of debt for [*double the consideration money*] pounds, for money borrowed, at the suit of the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of the survivor of them; and thereupon to confess the said action, or else to suffer judgment by *not informed, or otherwise,* to pass against the said [*surety*] in the said action; and to be thereupon forthwith entered up against him of record of the same court for the sum of [*double the consideration money*] pounds, and costs of suit. AND the said [*surety*] doth hereby further authorize and empower you, the said attornies, or any one of you, after the said judgment shall be entered up as aforesaid, for him the said [*surety*], in his name, and as his act and deed, to sign, seal, and execute, a good and sufficient release in the law to the said [*trustees*], or the survivors or survivor of them, their, or his heirs, executors, and administrators, of all and all manner of error and errors, writ and writs of error and errors, and all benefit and advantages thereof, and all misprisions of error and errors, defects and imperfections whatsoever, had, made, committed, done, or suffered in, about, touching, or concerning the aforesaid judgment, or in, about, touching, or concerning any writ, warrant, process, declaration, plea, entry, or other proceeding whatsoever, of, or in any wise concerning the same. AND what you the said attornies, or any one of you, shall do, or cause to be done in the premises, this shall be to you a sufficient warrant and authority. AND *it is hereby declared,* that the judgment so to be entered up is to be a further security for the payment of the said annuity of [*annuity*] pounds, in such manner as in the said indenture is expressed. IN WITNESS whereof the said [*surety*] hath hereunto set his hand

Warrant of attorney by a surety to confess judgment,

and to release errors.

General warrant.

Defeazance by reference to recital hereinbefore contained.

SEPARATE WARRANT OF ATTORNEY BY A SURETY, WITH DEFEAZANCE.

and seal (*c*), and the said [*trustees*], have hereunto (*d*) set their hand, the —— day of ——, in the —— year of the reign, &c.

WITNESS, [*Witness*], of, &c. [*surety*] L. S. [*trustees.*]

Affidavit.

Stamp.

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Where an instrument has an insufficient stamp, it may be properly stamped at any time, on paying the penalty.

An old deed stamped with the existing duty is evidence.

(*c*) See form of the affidavit of the execution, *ante*, p. 360.

(*d*) As to the stamp, *vide ante*, pp. 348, 359. But where an instrument *has an insufficient stamp, it may at any time be made available by affixing a proper stamp, and paying the penalty. 1 Tidd's Prac. 565, 7th edit. Therefore, where a rule *nisi* was obtained to set aside a judgment on a warrant of attorney, on the ground of an insufficient stamp, the Court of Common Pleas discharged the rule, the instrument having been properly stamped since the motion. *Burton* v. *Kirkby*, 7 Taunt. 174. 2 Marsh. 480. S. C.

[A deed which is produced stamped with the stamp required by 48 Geo. 3, c. 149, is evidence, although it has not affixed the deed stamp, of less value, required by the statutes in force at the time when such deed was executed. *Doe* v. *Whittington*, 4 Taunt. 20.]

WARRANT TO CONFESS JUDGMENT IN THE COLONIES.

WARRANT OF ATTORNEY *to confess Judgment in any of the* COLONIES.

(MONTSERRAT.)

To Esquire (*a*) or to any other attorney of the Court of Common Pleas, (*or*, King's Bench,) or of any other court of record held for the said island.

THESE are to desire and authorize you, or any one of you, to appear for me [*grantor*], of, &c. at the next Court of Common Pleas (*or* King's Bench) or any other Court of Record, to be held for the said island, or any other subsequent court; and then and there to receive a declaration, &c. (*insert the remainder of the form*, ante, p. 345.)

(*a*) *Vide ante*, p. 186.

WARRANT TO CONFESS JUDGMENT IN THE COLONIES.

Power to acknowledge colonial warrant of attorney.

And (*b*) to the intent that these presents may be duly acknowledged, recorded, and registered, and take effect according to the law, usage, and custom of the said island of (Montserrat,) the said [*grantor*] *hath* made, ordained, constituted, and appointed, &c. (*ut ante*, pp. 244-246, *ending*,) according to the true intent and meaning of the same. In Witness, &c. *ut ante*, p. 348.

(*b*) *Vide ante*, p. 244, (*p*). It is prudent to endorse the defeazance, although it does not appear that there is any rule of any of the colonial courts which makes it requisite.

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WARRANT TO ACKNOWLEDGE SATISFACTION ON JUDGMENT ON REPURCHASE, &c.

WARRANT of Attorney *to acknowledge* Satisfaction *on a* Judgment *for securing an Annuity, on a* Repurchase, *or* Determination *of the Annuity* (*a*).

TO [A. B., C. D.] and [E. F.] attornies of the Court of King's Bench (*or* Common Pleas) at Westminster, jointly and severally, or to any other attorney of the same Court.

Recital of judgment,

of satisfaction.

Authority.

Whereas I [*grantee*], of &c. heretofore to wit, in or about the term of —— last past, (*or* in the —— year of the reign of his late (*or* present) Majesty King *George* the ——) obtained judgment in his Majesty's Court of King's Bench (*or* Common Pleas) at Westminster, against [*grantor*], of, &c. for [*double the consideration money*] pounds, and —— costs, as by the record thereof may appear: And whereas I the said [*grantee*], have received satisfaction for the same: These are therefore to desire and authorize you the attornies above named, or any one

(*a*) When the judgment is satisfied, the grantor has a right to call on the grantee for a warrant of attorney to acknowledge satisfaction. 2 Tidd's Practice, 1062, 7th edit. But it must be done at the grantor's expense.

WARRANT TO ACKNOWLEDGE SATISFACTION ON JUDGMENT, ON REPURCHASE, &c.

of you, or any other attorney of the same court, to acknowledge and enter satisfaction upon the record of the same judgment; and for your so doing, this shall be your sufficient warrant and discharge in that behalf. In witness whereof, I have hereunto set my hand and seal, the —— day of ——, in the year of our Lord, 18—.

Testimonium.

[*grantee*] L. S.

Sealed and delivered being first duly stamped (*c*), in presence of [*Witness*], of, &c.

Stamp.

(*c*) The stamp is *one pound*. 55 Geo. 3, c. 184. Sched. part ii.

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WARRANT TO ENTER SATISFACTION IN INROLMENT OFFICE ON REPURCHASE, &c.

WARRANT *to enter Satisfaction in the Inrolment Office, either by the Grantee or his Executors or Administrators, on a Repurchase, or on the Determination of an Annuity* (*a*).

TO the proper officer of the Inrolment Office of the High Court of Chancery.

Authority to enter satisfaction in inrolment office.

I (*b*), [*grantee*], of, &c. do hereby authorize you to enter satisfaction in your books to an annuity of [*annuity*]

Instructions as to the inrolment of satisfaction piece.

(*a*) The Annuity Act does not authorize the entry of a discharge in the books. It is however generally done, as it proves, in case a search should be made, that the grantor is freed from the annuity. The entry of a satisfaction piece should never be omitted, when the grantor has several estates, because the memorial does not disclose the property on which the annuities are charged. The satisfaction piece should be written on a small piece of unstamped parchment, and should be left in the Inrolment Office, between the hours of ten and two. The person who takes it sees it entered, and signs a memorandum. The fee at the office is *five shillings*.

No stamp requisite.

BY EXECUTORS OR ADMINISTRATORS.

(*b*) If by the executors or administrators, say,

"We [*E. F.*] and [*G. H.*] executors, (*or* administrators) of [*grantee*], late of, &c. deceased, do," &c. *ut supra*.

pounds granted to (*c*) me by an indenture, bearing date *the —— day of ——, one thousand eight hundred and ——, and made between [*grantor*], of, &c. of the first part, me the said [*grantee*], of, &c. of the second part, and [*trustee*], of, &c. of the third part: And for so doing this shall be to you a sufficient authority. Dated this day of , 18 .

WARRANT TO ENTER SATISFACTION IN INROLMENT OFFICE ON REPURCHASE, &c.

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Witness, [*grantee*].

[*witness*], of, &c.

If the judgment has been registered in Middlesex, or Yorkshire, (*vide ante*, p. 359,) a certificate of satisfaction should be left at the Registry. See the Form, Index to the Precedents, tit. Satisfaction.

Satisfaction to be entered in Middlesex or Yorkshire.

(*c*) "The said [*grantee*], by," &c. *ut supra.*

In which case the satisfaction piece should be signed by the executors or administrators, and under their signatures; or on a similar piece of parchment to be annexed, say,

"10*th May* 18—, [*grantee*], of, &c. by his last will and testament, appointed [*executors*], of, &c. executors of his will.

Will.

"*23rd October*, 18—. The said will was proved in the Prerogative Court of the Archbishop of Canterbury, and probate granted to the said [*executors*]; (power being reserved to make the like grant to the said [ ] the other executor, when he should apply for the same.")

Probate.

Then the person who prepares the satisfaction piece should put the registrars' names, thus,

Geo. Gostling.
Nath. Gostling.
R. C. Creswell.
} Deputy Registrars.

If it be an administration, say,

Administration.

"*23d October*, 18—. Administration of the goods and chattels of [*grantee*], late of, &c. was granted by the Prerogative Court of the Archbishop of Canterbury, to [*administrators*], of," &c.

Then put the registrars' names, *ut supra.*

WARRANT TO VACATE COPYHOLD SURRENDER ON REPURCHASE, &c.

*WARRANT *to vacate a conditional Surrender of Copyholds for securing an Annuity, which has been repurchased, or has determined, where the Grantee cannot conveniently attend in Court, or before the Lord or Steward.*

TO the Steward of the Manor of ——, in the county of ——.

Acknowledgment, and warrant to vacate surrender.

I, [*grantee*], of, &c. hereby acknowledge to have received satisfaction on a conditional surrender made by [*grantor*], of, &c. of certain copyhold premises, held of the said manor, to [*trustee*], of, &c. and taken out of court on the —— day of —— 18—; AND *therefore* I request and authorize you to vacate such surrender accordingly. DATED the —— day of ——, 18—.

WITNESS, [*grantee*].

[*witness*] of, &c.

On unstamped parchment.

This should be written on parchment; a stamp does not appear to be necessary.

COPYHOLD SATISFACTION PIECE ON REPURCHASE, &c.

SATISFACTION PIECE, *taken by the Lord or Steward, and indorsed on a conditional Surrender of Copyholds for securing an Annuity.*

By indorsement on the surrender.

BE IT REMEMBERED, that out of court, on the —— day of ——, 18—, the within named [*grantee*] came before me [ ] lord (*or* steward) of the manor of ——, and acknowledged to have received satisfaction on the within written surrender: *And* requested that the said surrender should be vacated accordingly (*a*).

TAKEN the day and year above written, by me, —— [*lord*] or [*steward*]. } [*grantee*].

The satisfaction piece should be presented at the next court, and entered on the rolls.

MORTGAGES, &c. The forms, &c. under the title annuity, will shorten the other heads.

(*a*) The above forms are equally adapted to vacate a conditional surrender for securing money which has been discharged. Indeed the greater part of the forms, and also the notes, but more especially the recitals, under the title Annuity, are equally applicable to mortgages, and other conveyancing transactions; which will be the means of considerably shortening the other titles.

APPOINTMENT.

GAMEKEEPER TO KILL GAME, &c.

APPOINTMENT *of a* GAMEKEEPER *to kill Game, seize Engines, &c.*

KNOW ALL MEN BY THESE PRESENTS, *That I,* [*lord*] (or [*lady*]), of —— in the county of ——, esquire, (*or* spinster, &c. *as the case may be,*) lord (*or* lady) of the manor (*a*) of ——, in the county of ——, do hereby empower, authorize, nominate, and appoint [*gamekeeper*] of ——, in the county of ——, yeoman, (gentlemen, *or* esquire, *as the case may be,*] to be a gamekeeper, of, in, and to my (*b*) said manor, with full power, license, and authority, within and upon my said manor, to kill any hare, pheasant, partridge, or any other game whatsoever, for my sole use and benefit, (*or*, for the use and benefit of him the said [*gamekeeper*], *or* for the use and benefit of ——, in the county of ——, esquire, &c. *as the case may be*): (*c*) AND ALSO to take and seize all such guns, bows, greyhounds, setting-dogs, lurchers, or other dogs, to kill hares or conies, ferrets, trammels, lowbells, hays, or other nets, hare-pipes, snares, or other engines, for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the *precincts of my said manor

To kill game, 5 Ann. c. 14, s. 4. 48 Geo. 3, c. 93, s. 2,

and seize engines, 22 & 23 Car. 2, c. 25, s. 2.

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DISTRICT GAMEKEEPER IN WALES.

59 Geo. 3, c. 102, s. 3.

(*a*) If for a district gamekeeper in *Wales*, say, "manor, lordship, or royalty of ——, in the county of ——, in the principality of Wales."

(*b*) "the district and division of the parish (tything, hamlet, or place) of —— being part of my said manor, lordship, or royalty."

(*c*) If the lord of the manor be under the degree of an *esquire*, the power to seize engines should be omitted. *Vide post*, pp. 372, 374.

of ——, shall be used by any person or persons who by law are prohibted to keep or use the same (*d*). GIVEN

GAMEKEEPER TO KILL GAME, &c.

(*d*) If the lord of the manor be owner or occupier of any river or fishery within the manor, add,

LORD OWNER OF FISHERY.

"And I the said [*lord*] do hereby authorize, appoint, constitute, and empower the said [*gamekeeper*] to seize, detain, and keep, for my own use, all and every net, angle, leap, piche, and other engine, which he shall find used or laid, or in the custody or possession of any person or persons whomsoever, fishing in any river or fishery whatsoever, within my said manor, without my consent."

Gamekeeper to seize fishing nets. 4 & 5 W. & M. c. 23, s. 5.

The 3 Edw. 1, c. 1, 2 Inst. 159, enacts, that none, high nor low, by colour of kindred, affinity, or alliance, or by any other occasion, shall course in any park, nor fish in any pond, against the will or leave of the lord or his bailiff.

None shall course or fish against the will of the lord.

The 22 and 23 Car. 2, c. 25, s. 2, enacts, that all lords of *manors*, or other royalties, *not under the degree of an esquire*, may from henceforth, by writing under their hands and seals, authorize one or more gamekeeper or gamekeepers within their respective manors or royalties, who, being thereunto so authorized, may *take* and *seize* all such guns, bows, greyhounds, setting-dogs, lurchers, or other dogs to kill hares or conies, ferrets, trammels, lowbells, hays, or other nets, hare-pipes, snares, or other engines for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of such respective manors shall be used by any person or persons who by this act are prohibited to keep or use the same. And moreover, that the said gamekeeper or gamekeepers, *or* any other person or persons, being thereunto *authorized by warrant* under the hand and seal *of any justice of the peace* of the same county, division, or place, may, in the day time, search the houses, out-houses, or other places of any such person or persons by this act prohibited to keep or use the same, as upon *good [*373] ground shall be suspected to have or keep in his or their custody any guns, bows, greyhounds, setting-dogs, ferrets, cony-dogs, or other dogs to destroy hares or conies, hays, trammels, or other nets, lowbells, hare-pipes, snares, or other engines aforesaid: and the same and every or any of them to seize, detain, and keep, to and for the use of the lord of the manor or royalty where the same shall be so found or taken, or otherwise to cut in pieces or destroy, as things by this act prohibited to be kept by persons of their degree.

Lords of manors, &c. of the degree of an *esquire* may appoint any number of gamekeepers to seize engines for taking game.

Power to search houses.

And Sect. 3, enacts, that all and every person and persons, not having lands and tenements, or some other estate of inheritance, in his

What persons are prohibited

GAMEKEEPER TO KILL GAME, &c.

under my hand and seal, this —— day of ——, in the —— year of the reign of his Majesty *George* the *fourth*,

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from keeping guns, bows, dogs, &c.

own or his wife's right, of the clear yearly value of one hundred pounds *per annum*, or for term of life, or having lease or leases of ninety-nine years, or for any longer term, of the clear yearly value of one hundred and fifty pounds, other than the son and heir apparent of an esquire, or other person of higher degree, and the owners and keepers of forests, parks, chases, or warrens, being stocked with deer or conies for their necessary use, in respect to the said forests, parks, chases, or warrens, are hereby declared to be persons by the laws of this realm not allowed to have or keep for themselves, or any other person or persons, any guns, bows, greyhounds, setting-dogs, ferrets, coney-dogs, lurchers, hays, nets, lowbells, hare-pipes, gins, snares, or other engines, aforesaid; but shall be and are hereby prohibited to have, keep, or use the same.

An equitable estate of the value required is a qualification.

An equitable as well as legal estate gives a qualification; but the estate, of whatever kind it may be, must be of the value required, clear of all mortgages or incumbrances created by the owner, or those under whom he claims. *Wetherell* v. *Hall*, Cald. 230; 2 Bac. Abr. 121, Gwil. ed.; 8 Durnf. & East, 221. *S. C.* [As to the qualifications to kill game, *vide post*, Vol. 4, p. 227.] And see 9 Price.

Power to lords of manors to appoint *one* gamekeeper to *kill* game within each manor.

By the 5 Ann. c. 14, s. 4, any lord or lady may of his or her respective lordship or manor, by writing under his or her hand and seal, empower his or her gamekeeper or gamekeepers, upon his or her own lordship or manor as aforesaid, to *kill* hare pheasant, partridge, or any other game whatsoever. And by the 9 Ann. c. 25, s. 1, no lord or lady of a manor shall make, constitute, or appoint above one person to be a gamekeeper within any one manor, with power or authority to kill or destroy the game thereof: and the name of such person shall be entered with the clerk of the peace of the county, riding, or division wherein the manor lies; such entry to be made and viewed without fee or reward; and a certificate thereof to be granted by the clerk of the peace, on payment of one shilling: and by the 25 Geo. 3, c. 50, s. 2, every deputation or appointment of a gamekeeper granted

Appointment to be registered with the clerk of the peace.

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*to any person, by any lord or lady of a manor, in *England* or *Wales*, shall be registered with the clerk of the peace of the county, riding, or place where the manor shall lie, and such gamekeeper shall take out a certificate thereof annually, the duties upon which are specified in stat. 52 Geo. 3, c. 93, sch. (L); 2 Burn's Justice, 523, 23d ed. sect. 9. If any person, to whom any deputation or appointment of a gamekeeper shall be granted, shall, for twenty days next after the granting thereof, neglect or refuse to register the same, and take out a certificate thereon as aforesaid, he shall forfeit £20. By sect. 14, in case of a new depu-

Assessed taxes on gamekeepers.

After notice of

by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord 18—. GAMEKEEPER TO KILL GAME, &c.

[*lord*] L. S.

SIGNED, SEALED AND DELIVERED, being first duly stamped, in the presence of

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tation of a gamekeeper, the same shall be registered with the clerk of the peace, and after a new certificate thereon obtained as aforesaid, the first certificate shall be void, and the person acting under the same, after notice to him given of such new certificate, shall be liable to the penalties prescribed by this act, in the same manner as if no certificate had been granted to him. By sect. 17, no certificate obtained under any deputation or appointment shall authorize any such gamekeeper to take or destroy game out of or beyond the precincts or limits of the manor, for or in respect of which such deputation or appointment was given and made. But a gamekeeper of a lord of a manor has a right to *carry* a gun any where out of the manor, although he cannot *use* it out of the manor. *Rogers* v. *Carter*, 2 Wils. 390.

a new certificate, the former gamekeeper cannot act.

No gamekeeper can destroy game out of his lord's manor; but he may carry his gun, although he cannot use it out of the manor.

By the 48 Geo. 3, c. 93, s. 2, after repealing the 2 Jac. 1, c. 27, s. 2, and the 3 Geo. 1, c. 11, it is enacted, That it shall be lawful for *any* lord or lady of any manor to appoint and depute any person whatever, whether acting as a gamekeeper to any other person or not, or whether retained and paid for as the male servant of any other person or not, or whether a qualified person or not, to be a gamekeeper to any such manor, *with authority* to such person as gamekeeper *to kill game* within the same for his own use or for the use of any other person or persons whatever, to be specified in such appointment or deputation, whether qualified or not: and no person so appointed gamekeeper as aforesaid, and empowered to kill game for his own use or for the use of any other person so specified as aforesaid, and not killing any game for the use of the lord or lady of the manor for which such deputation shall be given, shall be deemed or taken to be, or entered or paid for as, the gamekeeper or male servant of the lord or lady making such appointment or giving such deputation as aforesaid.

Lords of manors may appoint qualified or unqualified persons gamekeepers, with authority to *kill* game.

Sect. 3. And that any person appointed gamekeeper under the authority of this act to kill game for his own use, or the use of any other person, shall have the same rights, privileges, power, and authority, as if he had been legally qualified and appointed to act as gamekeeper *to kill game for the use of the lord or lady of the manor appointing such gamekeeper under any laws in force immediately before the passing of this act.

Gamekeepers so appointed shall have the same rights as if qualified.

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The *quasi* lord or lady of a *reputed* manor has no power, under any

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nors give no right to appoint gamekeepers.

of these acts, either to appoint a gamekeeper *to seize* guns, engines, &c. or to *kill* game. Many of the places which are called manors would not be found to be such in point of law if the matter were strictly examined. To constitute a manor it is necessary not only that there should be two freeholders within the manor, but *two freeholders holding of the manor, subject to escheats*; *Glover* v. *Lane*, 3 Durnf. & East, 447; *Bradshaw* v. *Lawson*, 4 Durnf. & East, 446; *Rumsey* v. *Walton*, cited there; *Chetwode* v. *Crew*, Willes, 618; but a copyhold manor is not capable of an escheat of a freehold, because that which comes in lieu of another ought to be of the same nature, and then the freehold escheated would be copyhold, which is repugnant and impossible. *Rex* v. *Staverton*, Yelv. 191.

Manor extinct for want of freeholders;

If all the freeholds, except one, escheat or become forfeited to the lord; or if he purchase all the freeholds except one; or if he grant away the services of all the freeholders except one; or release their services to all the freeholders except one; notwithstanding the demesnes and services of the copyholders remain, and although it be known by the name of a manor, yet it is not in law a manor, for want of freeholders, the maintainers and upholders of a Court Baron. But the lord may still hold a court for the copyholders. 4 Co. 26 b.; Co. Cop. sect. 31, Tr. 53; *Vines* v. *Durham*, cited *Sir Moyle Finch's case*, 6 Co. 67 a. And although it would cease to be a legal manor, yet it would still be a seigniory in gross. F. N. B. 3, C.; 1 Watk. Cop. 21; 1 Cru. Dig. 52, 2d ed.; 3 Bac. Abr. 227, 6th ed., *Fines*, &c. (B.); Co. Tr. 54. The manor is extinct because there cannot be a manor unless there be a Court Baron, which is the chief prop and pillar of a manor; Co. Cop. s. 31, Tr. 49; and a Court Baron cannot be held unless there be two suitors at the least; *The King* v. *Staverton*, Yelv. 190, 191; because in a Court Baron the suitors are the judges; Co. Litt. 58 a; *Melwich* v. *Luter*, 4 Co. 26 b; 4 Inst. 268; Co. Tr. 51; [and not the steward; *Chetwode* v. *Creut*, Willes, 619; *Howard* v. *Wood*, Sir T. Jones, 126; 2 Lev. 245, *S. C.*;] and if there be but one suitor, he has no peer, and consequently there is no person to sit in judgment on him in the manor court; *Baldwin* v. *Tudge*, 2 Wils. 20; and therefore when there is but one freehold remaining the manor is extinct and determined. Bro. Abr. *Comprise*, &c. pl. 31, 150 b.; *Tenures*, pl. 102, *Suite and Contribution*, pl. 17, *Court Baron*, &c. pl. 22; Kitchin on Courts, 4, a. Fr. ed. 7, 4th ed. So if the lord transfer to a stranger the services of all his tenants, and reserve to himself the *demesnes, or if he grant away the demesnes and reserve the services, in both cases the lord has a manor only in name; because in the first case he wants demesnes, and in the other he wants services. Co. Tr. 53; *Sir Moyle Finch's case*, 6 Co. 64 a; *The King* v. *The Bishop of Chester*, Skin. 661; 1 English Copyholder, 379. So if a manor descend to coparceners, and a parti-

by separating the services from the demesnes;

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tion be made, and the entire demesnes are allotted to one, and the services to another, the manor is then *suspended*, for neither of them has any other than a nominal manor; but if one of them die without issue, and the demesnes descend to her who has the services, or *vice versâ*, the manor is revived again; because on the partition they were *in* by act of law, and the manor was only suspended, and was not extinct, and the demesnes and services were united again by act of law. *Earl of Gloucester's case*, Bro. Abr. *Extinguishment*, pl. 13; 6 Co. 64 a; 2 Roll. Abr. 122, (F.) pl. 3, (H.); 15 Vin. Abr. 222, 224. So it is said if a partition be made of a manor between two coparceners, and on the partition each has part of the demesnes and part of the services, because each of them is *in* by act of law, each of them has a manor, not in name only but in reality and in name; *Sir Moyle Finch's case*, 6 Co. 64 a; Co. Cop. s. 31, Tr. 52, 53; 2 Roll. Abr. 122, (G.); because they were compellable to make partition by the common law, being *in* by descent. But it is otherwise of joint-tenants, for they are *in* by purchase, and were not compellable by the common law to make partition. *Marshe* v. *Smith*, 1 Leon. 27. So if a man has a manor, and he grant part of the demesnes and part of the services to another, the grantee shall not have a manor, because a man by his own act cannot create a manor at this day; and thus it appears that *fortior et potentior est dispositio legis quam hominis*. *Sir Moyle Finch's case*, 6 Co. 64; Gilb. Ten. 210; *Morris* v. *Smith*, 1 Cro. 38. However, the doctrine that coparceners after partition shall have several manors is rather doubtful, because it was held in *The Queen* v. *The Duchess of Bolton*, 6 Mod. 151, that a manor is an entire thing, and not severable: and common sense seems to oppose the doctrine, because there might by possibility be ten coparceners, in which case, if the doctrine were followed, there might be ten manors made from one manor. After a partition of the demesnes and services, either by joint tenants, tenants in common, or coparceners, it seems that they may hold *one* joint Court Baron, and consequently may jointly appoint gamekeepers.

On partition of a manor.

Although a manor exist only by reputation, yet nevertheless all its *prescriptive* rights remain; such as the right to wrecks, estrays, &c. and if there be but one freehold tenant, the seigniory and services to him remain. The *power* to appoint a gamekeeper, however, is not a *prescriptive right. Yet Mr. Chitty, in his treatise on the Game Laws, vol. 1, 25, says, "It should seem that a manor by reputation, but which has ceased to be a legal manor by defect of suitors, may yet retain its *privilege as a preserve for game*, and might authorize the lord to appoint a gamekeeper. *Soane* v. *Ireland*, 10 East, 259, *sed quære*." This opinion, however, cannot be supported, because the act of parliament gives the power only to "lords of manors," who had no such power at common law, and therefore the person entitled to exercise that power,

The *prescriptive* rights of a reputed manor remain.

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must fully answer the words of the act. Moreover, *Soane* v. *Ireland*, cited by Mr. Chitty, is not in point; for the question in that case was, whether an allegation in a declaration, that *A.* was seised of the manor of F., and that he and all those whose estate he has in the said manor, have immemorially appointed a *sexton* of the parish of F., is sustained by proof of his seisin of a *quondam* manor, which had ceased to be a legal manor by defect of freehold tenants, and existed only by reputation; in which case Lord Ellenborough said, if F. were once a manor, as it appeared, this *prescriptive* right would still belong to it, though other manerial rights, such as that of holding courts, for want of freehold tenants, might be gone and severed from it. It would still be a manor by reputation for this purpose, which will satisfy the allegation; and it was not necessary to prove it a continuing manor for all purposes. *Soane* v. *Ireland*, 10 East, 259.

No lord of a manor *under* the degree of an esquire can appoint gamekeepers to *seize* engines, &c.

No lord or lady of a manor, *under the degree of an* ESQUIRE, can appoint gamekeepers to *seize* guns, nets, and other engines used for the destruction of game, 22 and 23 Car. 2, c. 25, s. 2, whatever the estate may be; for no landed estate, however large, will confer the title, as the term *esquire* has no relation whatever to landed property; but it must be acquired either by office, the king's patent, or some of the means laid down by Selden and Camden. A lord of a manor is certainly not an esquire by virtue of his manor or royalty, though in common acceptation he is considered as such. Per Mr. Justice Willes, *Jones* v. *Smart*, 1 Durnf. & East, 50, in opposition to a very loose *dictum* of his own, in *Mallock* v. *Eastly*, 7 Mod. 488. His lordship added, "Nothing can be more oppressive than the present system of the game laws. We are told that they arose from the old forest laws, which restricted the right of killing game to much narrower limits; and hence that these new regulations encroach on no privileges to which we were before entitled, are introductive of no new or extraordinary severities; but, on the contrary, are mild and supportable, when compared with the sources from whence they flow. Mr. Justice Blackstone, however, in the 2d book of his Commentaries, c. 27, holds a different lan-

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guage. And * wherever a law is productive of tyranny, I shall never give my consent to narrow the construction."

Who are esquires.

ESQUIRES in law, and properly so called, are the sons of all the peers and lords of parliament, in the lives of their fathers; 2 Inst. 667; 2 Vin. Abr. 84, pl. 28; the eldest sons of the younger sons of peers, and their eldest sons, in perpetual succession; Judge Doderidge's Nobility, 144, [the second, for after page 170, the next page is numbered, by mistake, 105]; Selden's Tit. Hon. 342; and consequently the younger sons of peers, after the death of their fathers. Cowel's Interpreter, *Esquier*. All the noblemen of other nations, and Scotch and Irish peers, if they be not knights. 3 Selden's Works, 848. 2 Inst. 667. The eldest sons of

baronets; Cow. *ut supra;* the eldest sons of knights; 2 Inst. 596, 667; Wood's Inst. 45, 10th edit.; and their eldest sons for ever. Dod. Nobility, 144. Selden's Titles of Honor, 342, edit. 1614. Esquires created expressly, with a collar of SS. and spurs of silver; Spelman's Glossary, *verbo Armigeri,* 3 Selden's Works, 853-4. Tit. Hon. 342; of which, at present, there are none. Persons to whom the king gives arms by letters patent, with the title esquire, and their eldest sons for ever. Seld. Tit. Hon. 343. Com. Dig. *Dignity,* (B. 8). Esquires of knights of the bath, each of whom formerly constituted *two* at his installation; 3 Selden's Work, 851; Byshe's Upton de Studio Militari, 21; 1 Dugdale's Antiquities of Warwickshire, 708; Appendix, Stuart's View of Society in Europe, 433, 2d edit.; Anstis's Historical Essay upon the Knighthood of the Bath, 66, 72, 99, edit. 1725; Stow's Annals, 899; but the number now is *three;* for by the statutes of the Order of the Bath, sect. 15, 23 May, 11 Geo. 1, at which time the order was revived, each knight is required to have at his installation one young esquire, and two esquires governors; all of whom have the same rights and advantages as gentlemen of the privy chamber: and it is by the same section declared, that the eldest son of every of these esquires shall have and use the addition and title of esquire in all acts, proceedings and pleadings. Statutes of the Order of the Bath, p. 32. Barristers at law, by their office or profession. Spelm. and Cow. *ut supra. Messor* v. *Molyneux,* cited 1 Wils. 245. Justices of the peace, while in the commission, but not justices of the peace of corporate towns, &c. Cow. *ut supra. Rex* v. *Brough,* Mayor of Heden, 1 Wils. 244. Persons chosen esquires to the body of the prince; Selden's Tit. Honor, 342; [Judge Doderidge's Nobility, 144, *ut supra;*] of which at present there are none, [their place being supplied and rendered unnecessary by means of a standing army.] Persons attending upon the king's coronation in some employment, or persons employed in any superior office in the kingdom, or serving in some place of better note in the king's household; Dod. Nobility, 144-5; Selden's Tit. Honor, 343. And it has been *supposed,* that all that bear an office of trust under the crown, and who *are styled esquires by the [*387] king in their commissions and appointments, as they are once honoured by the king with the title of esquire, they have a right to that distinction *for life;* Christian's note, 1 Bla. Com. 406 (19); such, for instance, as sheriffs of counties, or captains in the army or navy; Christian's Game Laws, 132. Notwithstanding the 44 Geo. 3, c. 54, s. 26, enacted, that all officers in corps of volunteers, having commissions from lieutenants of counties, should *rank* with the officers of his majesty's regular forces, yet a commission signed by the lord lieutenant of a county, and announced in the Gazette, constituting a person captain commandant of a corps of volunteer infantry, and styling him an *esquire,* does not create such a person an esquire, so as to qualify his son and heir apparent to

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kill game; because the lord lieutenant cannot confer honours; and the Court said there was no pretence to call such a gentleman an esquire; *Talbot* v. *Eagle*, 1 Taunt. 510; consequently such a person, though lord of a manor, has no power to appoint a gamekeeper to *seize* engines, &c.

A clergyman, lord of a manor, may appoint a gamekeeper to seize engines.

Although, according to Mr. Serj. Lens's opinion, 2 Burn's Justice, Chetwynd's edit. 505, "that the eldest son of a clergyman is not as such qualified under any of the descriptions of the statute 22 and 23 Car. 2, c. 25, s. 3; and that it makes no difference in this respect that the father is a master of arts in an English university, and in the commission of the peace:" still it seems, that a clergyman in the commission of the peace, lord of a manor, would be considered as not being *under the degree* of an esquire, so as to qualify him to appoint a gamekeeper to seize engines, &c. The ground of the learned Serjeant's opinion perhaps is, that such a clergyman is neither an esquire, nor a "person of *higher* degree."

Ladies of manors.

As married women and widows are entitled to the same rank among each other, as their husbands would respectively have borne between themselves, except such rank be merely professional or official, and unmarried women to the same rank as their eldest brothers would bear among men, during the lives of their fathers, 1 Bla. Com. 406, n., it seems that these ranks must be the criterion by which to judge, whether as ladies of manors, they are enabled to appoint gamekeepers to *seize* engines, &c. Lord Chief Justice *Willes* appears to have mistaken the words of the statute, when he says, a lady of a manor cannot bear the title required by the statute of Charles the Second. *Mallock* v. *Eastly*, 7 Mod. 488. The daughter of a peer, the widow of a knight, &c. are not under the degree of an esquire, and, most clearly, under the statute of Charles the Second, they have authority to appoint a gamekeeper to seize engines, &c.

Any lord of a manor may appoint a gamekeeper to *kill* game.

Any lord or lady of a manor, although not of the degree of an esquire, *or a corporation, though its members are not of the degree of esquires, *Spurrier* v. *Vale*, 1 Camp. 457; 10 East, 413, may appoint a gamekeeper to *kill* game, but not to *seize* engines, &c.; for although the 5 Ann. c. 14, only authorized the lord or lady of a manor to empower *his* or *her* gamekeeper to kill game, viz. the gamekeeper authorized by the 22 and 23 Car. 2, c. 25, yet the 48 Geo. 3, c. 93, s. 2, authorized "*any* lord or lady of *any* manor," of whatever degree, to appoint a gamekeeper to *kill* game.

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The lord of a manor cannot authorize another person to appoint a gamekeeper.

The person to appoint a gamekeeper under these acts, must be *dominus pro tempore*; for under the rule *delegatus non potest delegare*, a man cannot give or convey to another the power of appointing a gamekeeper, without a conveyance also of the manor itself. Such a power is a mere emanation of the manor, and inseparable from it. It is a mere shadow, accompanying the substance. *Calcraft* v. *Gibbs*, 5 Durnf. & East,

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20. [In an action against a gamekeeper for the recovery of the penalty, it is sufficient for the defendant to show that he is acting under the authority of a person who had a *reasonable* ground of title to the manor, which is the construction to be given to the words "colourable ground of title," which occur in the act of 5 Ann. c. 14. *Hunt* v. *Andrews*, 3 Barn. & Ald. 346.] See a form of a lease to enable the lessee to appoint gamekeepers, *post*, p. 396.

Additional powers to appoint gamekeepers in *Wales*.

All the before mentioned provisions extend as well to *Wales* as to *England*; and now, by the following act, 59 Geo. 3, c. 102, there are additional powers given to appoint gamekeepers of lands in Wales;

"*An Act for further regulating the Appointment of the Gamekeepers in Wales*; and which received the royal assent 12th July, 1819.

"Whereas there are now several districts and lands, within the principality of Wales, which are not known to be comprehended within the boundaries of any manors, lordships, or royalties; and there are also several other districts or lands within the principality which formerly belonged to or formed part or parts of such manors, lordships, or royalties, but which have been alienated therefrom or enfranchised by the lord or lords for the time being of such manors, lordships, or royalties, and many of such districts and lands are very extensive: And whereas the owner or owners of such districts and lands cannot, nor can any other person or persons, appoint any gamekeeper or other servant to kill game on such lands, for the use of the owner or owners thereof, without subjecting such gamekeeper or other servant to the penalties imposed by divers acts of parliament made for the preservation of the game; which regulations and enactments have tended greatly to the encouragement of poachers and other idle and disorderly persons, to destroy the game within such districts of the said principality: For remedy whereof," it was thereby enacted, "That from and after the first day of August next, it shall and may be lawful to and for all and every person and persons, being seised in fee or as of freehold, or otherwise beneficially entitled in his, her or their own right, of and in *any lands situate and being within the said principality, of the full and clear annual rent of five hundred pounds, and not being within the bounds of any manor, lordship, or royalty, or being within the precinct or bounds of any manor, lordship, or royalty, shall have been or shall be enfranchised or alienated therefrom; †or to appoint by any writing

Persons possessing certain property may appoint gamekeepers.

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† To preserve the sense, the word "or" should be omitted, as it has no correllative. A doubt being entertained whether the printed statutes were not in this respect incorrect; the original record has therefore been searched: the error is in the original. After the act passed the Lords, it was amended in the Commons, by erasing a few lines; but by mistake the word "or" was not erased from the ingrossment.

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or writings under his, her, or their hand or hands, a gamekeeper to preserve or to course, hunt, shoot at, or kill game, for the use of the person or persons who shall make such appointment, in, over, and upon such his, her, or their lands, and in, over, and upon the lands of every other person or persons who shall by license in writing under his, her, or their hand or hands, authorize him, her, or them to appoint a gamekeeper or gamekeepers, or other servant or servants, to preserve, course, hunt, shoot at, or kill game in, over, and upon the lands, of the person or persons not being within the bounds of any manor, lordship, or royalty, so granting such license.

Gamekeepers not subject to penalities under former acts.

"II. And be it further enacted, That every such gamekeeper, having such appointment as aforesaid, during the continuance of such appointment, shall not be made subject or liable to any penalties imposed by any former statutes of this realm, for having any game in his or their custody or possession, or for coursing, hunting, shooting at, or killing game, on or upon any lands mentioned in his or their appointment or appointments, and whereon the person or persons making such appointment or appointments has or have any power, license, or authority to make or grant any appointment or appointments by virtue of this act: Provided always, that nothing herein contained shall extend or give, or be construed to extend or give, any power or authority to any person or persons to make or grant any such appointment or appointments, license or licenses, to course, hunt, shoot at, or kill game in, over, or upon his, her, or their lands, situate or being within the precinct or boundary of any manor, lordship, or royalty, unless such lands shall have been enfranchised or alienated therefrom, without the license or consent in writing of the proprietor or proprietors of such manor, lordship, or royalty, having the right to pursue and kill game *in, upon, or over such lands, first had and obtained; and where in any existing lease or demise, or agreement for demising any lands, the lessor or lessors, landlord or landlords thereof, hath or have not reserved the right or power of hunting, shooting or sporting, †when no such appointment or appointments, license or licenses, shall be valid, so as to authorize any such gamekeeper or gamekeepers, servant or servants, to enter upon any such lands, to preserve, course, hunt, shoot at, or kill game thereon, without the consent in writing of the person or persons in the actual possession of such lands first had and obtained.

Act not to authorize appointment of gamekeepers of lands within any manor, and not enfranchised therefrom, without the consent in writing of the proprietor of the manor.

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Where lessors have not reserved the right of sporting, gamekeepers not to enter on lands without the consent in writing of lessees.

Lords of *extensive* manors may appoint gamekeepers for

"III. And whereas the manors, lordships, and royalties, within the said principality, are in many instances extremely extensive, and comprehend very large tracts of country; and whereas by an act passed in

† The sense requires the substitution of the word "then" for "when." The error is in the original record, which the printed statutes follow as a matter of course.

the ninth year of the reign of Queen Anne, intituled *An Act for making the Act of the Fifth Year of her Majesty's Reign for the better Preservation of the Game, perpetual, and for making the same more effectual*, it is among other things enacted, that only one gamekeeper shall be appointed to kill game within any one manor: And whereas such restriction hath, on account of the extent of the said manors, lordships, and royalties, been found extremely inconvenient, and tended greatly to the destruction of the game within the said principality; be it enacted by the authority aforesaid, That the lords and ladies of such manors, lordships, and royalties, and the stewards of the crown for such manors, lordships, and royalties as appertain to his Majesty within the said principality shall be, and they are hereby authorized respectively to nominate and appoint gamekeepers for such districts and divisions of their respective manors, lordships, and royalties, as they shall think fit; and that each and every gamekeeper so appointed, shall have the like powers, privileges, and authorities within such district or division as any gamekeeper appointed for the whole of a manor hath or would have by virtue of any act now in force: Provided always, that nothing herein contained shall be construed to authorize the appointment of more than one gamekeeper for the same district or division, and that all appointments under this act shall be registered with the clerk of the peace in like manner, and be subject to all other regulations which are enacted with respect to the appointment of gamekeepers of manors by any act now in force.

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Act not to authorize appointment of more than one gamekeeper for the same district. Appointments to be registered with the clerk of the peace.

"IV. And be it further enacted, That it shall and may be lawful to *and for all and every persons and person, who shall or may grant or make any appointment or appointments, license or licenses, by virtue of this act, to revoke, annul, or render void all and every such consent, appointments and appointment, licenses and license, and to grant or make other consent or consents, appointments or licenses in lieu thereof, as often as to him, her, or them, shall seem proper.

Persons granting appointments may annul the same, and grant others in lieu thereof.

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"V. Provided always, that nothing herein contained shall extend or be construed to extend the protection of this act to any person or persons killing game without a certificate taken out or purchased, according to the provisions of the act now in force respecting game certificates, or in any manner to affect the rights of his Majesty, or his successors, or of any other person or persons, in, to, or over any manor, lordship, or royalty, within the said principality."

This act not to extend to persons killing game without certificate.

FISHERIES.

The 4 and 5 Will. and Mar. c. 23, s. 5, reciting, that whereas divers idle disorderly, and mean persons have and keep nets, angles, leaps, piches, and other engines for the taking and killing of fish out of the

Persons not owners of *fisheries*, may not keep nets, &c.

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ponds, waters, rivers, and other fisheries, to the damage of the owners thereof, enacts, that no person or persons whatsoever shall and may, at any time or times from and after the five and twentieth day of March, which shall be in the year of our Lord one thousand six hundred and ninety-three, have or keep any net, angle, leap, piche, or other engine for the taking of fish, other than the makers and sellers thereof, for their better conveniency in the sale of the same, and other than the owner and occupier of any river or fishery for the time being; and moreover, that it shall and may be lawful, not only for the owner or occupier of any river or fishery, *and also for all and every other person and persons by him or them for that purpose appointed*, to seize, detain, and keep, to his and their own use and uses, all and every net, angle, leap, piche, and other engine which he or they shall find used or laid, or in the custody or possession of any person or persons whatsoever, fishing in any river or fishery whatsoever, without the consent of the owner or occupier thereof, but also for any person or persons whatsoever (being thereunto authorized by warrant under the hand and seal of any justice of the peace of the same county, division, borough, town corporate, or any other place,) in the day time, to search the houses, out-houses, or other places of any person or persons hereby prohibited to have or keep the same, as shall be suspected to have or keep in his or their custody or possession any net, angle, leap, piche, *or other engine aforesaid, and the same and every or any of them to seize, detain, and keep to his and their own use and uses, or otherwise to cut in pieces or destroy, as things by this act prohibited to be kept by persons of their degree.

Owner of fishery, and his appointee, may seize nets, &c. used in his fishery: and any person may search, by warrant, for nets, and dispose of them as he will.

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Sect. VI. Provided that this act, or any thing therein contained, shall not extend, or be construed to extend, to abridge any fisherman or his apprentice or apprentices, lawfully authorized to fish in navigable rivers or waters, with lawful nets and engines; but that every of them shall and may (according to the laws and orders made, and to be made and settled for the good order, rule, and government of such navigable rivers and waters,) use the trade of fishing, as they lawfully might have done before the making of this act; anything in this act contained to the contrary in any wise notwithstanding. See also 5th Geo. III. c. 14, s. 3.

Fishermen, &c. lawfully authorized, excepted.

In rivers not navigable the proprietors of the land have the right of fishery on their respective sides; and it generally extends *ad filum medium aquæ*. But in navigable rivers the proprietors of the land on each side have it not; the fishery is common; it is, *primâ facie*, in the king, and is public. If any one claims it exclusively, he must show a right. If he can show a right by prescription, he may then exercise an exclusive right; though the presumption is against him, unless he can prove such a prescriptive right. Therefore he may have an exclusive privilege of fishing, even in an arm of the sea; such a right shall not be pre-

Who have the right of fishing in rivers.

sumed but the contrary, *primâ facie;* but it is capable of being proved. *Carter* v. *Murcot*, 4 Burr. 2164; *The King* v. *Wharton*, 12 Mod. 510; *Lord Fitzwater's case*, 1 Mod. 106; *The Corporation of Orford* v. *Richardson*, 4 Durnf. & East, 437. [A grant of a several fishery passes nothing but the liberty of fishing, and not the ownership in the soil; being therefore an incorporeal and not a territorial hereditament, it cannot be granted even for a term of years without deed. Co. Lit. 4 b. *Duke of Somerset* v. *Fogwell*, 5 Barn. & Cress. 875. And see *post*, Vol. 4, p. 221. But it should seem that where the owner's claim is founded on prescription, and the terms of the grant are not known, it would be presumed that he was the owner of the soil. 5 Barn. & Cress. 386.]

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Grant of a several fishery does not pass the soil.

See further, Com. Dig. *Justices of the Peace*, (B. 44); 2 Burn's Justice, 390, 23d ed., *Fish and Fisheries*, I.; 3 Edw. 1, c. 1; 2 Inst. 159.

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APPOINTMENT *of a* GAMEKEEPER *for Preservation of the Game, and to seize Engines* (*a*), *&c.*

GAMEKEEPER TO PRESERVE GAME.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, [*lord*], of ——, in the county of ——, esquire, lord of the manor of ——, in the county of ——, *send Greeting.* KNOW YE, that I the said [*lord*] do hereby authorize, appoint, constitute, and empower [*gamekeeper*], of ——, in the county of ——, (yeoman, *or* labourer, &c.) to be gamekeeper of, in, and to (*b*) my said manor of ——, and

22 & 23 Car. 2, c. 25, s. 2.

[(*a*) A general authority to seize engines is good; but not it seems to seize game in the hands of unqualified persons. The authority in the latter case should refer to the individual or individuals on whom the seizure is to be made. *Bird* v. *Dale*, 1 J. B. Moore, 290.]

(*b*) If it be for a district gamekeeper for lands in Wales, add,

DISTRICT GAMEKEEPER IN WALES 59 Geo. 3, c. 102, s. 3.

"the district and division of the parish, (tything, hamlet, or place) of——, being part of"

GAMEKEEPER TO PRESERVE GAME.

all the royalties, rights, members, and appurtenances (*c*) thereto belonging, during my pleasure, to keep and preserve the game within and upon, the said manor: *But* not to kill or in anywise to pursue or destroy the same. And for the purpose of enabling the said [*gamekeeper*] to preserve the game within the said manor, I do hereby give and grant unto him, during such my pleasure, full power and authority to take and seize all such guns, bows, greyhounds, setting-dogs, lurchers, or other dogs, ferrets, trammels, lowbells, hayes, or other nets, hare-pipes, snares, or other engines for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of such manor shall be used by any person or persons who by the laws of this realm are prohibited to keep or use the same (*d*). And further, I [*394] do hereby, give *and grant unto him the said [*gamekeeper*], during my pleasure, full power and authority to do all and every other act and acts, thing and things, which I have power to authorize, and which are requisite and necessary for the preservation of the game (*e*) within the said manor, and for the discovery and conviction of offenders in the destruction and pursuit of the same, against the laws and statutes of this realm. In witness whereof, I the said [*lord*] have hereto set my hand and seal, the —— day of ——, [in the —— year of the reign of his Majesty (*George*) the (*Fourth*), by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and] in the year of our Lord, 18—.

To preserve the game:

to seize engines &c.

Signed, sealed, and delivered, being first duly stamped (*f*), in the presence of }

(*c*) "to the said district and division belonging," &c. *ut supra.*

LORD OWNER OF FISHERY.

(*d*) If the lord of the manor be owner of or occupier of any river or fishery within the manor, the power, *ante*, p. 372, to seize fishing nets, may often be found useful.

FISHERY.

(*e*) "and fish within," &c.

Stamp.

(*f*) Stamp one pound fifteen shillings. 55 Geo. 3, c. 184.

*APPOINTMENT *by the Owner or Occupier of a* FISHERY *of a Person to seize Nets, &c.*

GAMEKEEPER TO SEIZE FISHING NETS.

I —— of ——, in the county of ——, gentleman, (*&c.*) the owner (*or* occupier) of the river or fishery called or known by the name of ——, situate in the parish of ——, in the county of ——, [by virtue and in pursuance of an act passed in the fourth and fifth years of the reign of their late Majesties King William and Queen Mary, intituled "An Act for the more easy Discovery and Conviction of such as shall destroy the Game of this Kingdom," have authorized, appointed, constituted, empowered, and] by these presents do authorize, appoint, constitute, and empower ——, of ——, in the county of ——, labourer (*or* yeoman), to seize, detain, and keep, for my own use, all and every net, angle, leap, piche, and other engine which he shall find used or laid, or in the custody or possession of any person or persons whatsoever fishing in the said river or fishery, or any part thereof, without my consent. As WITNESS my hand, the —— day of ——, in the year of our Lord, 18—.

4 & 5 W. & M. c. 23, s. 5.

WITNESS.

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LEASE *of* MANORS *for the purpose of enabling the Lessee to depute* GAMEKEEPER (*a*).

LEASE TO ENABLE LESSEE TO APPOINT GAMEKEEPERS.

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—; BETWEEN [*lessor*], of, &c. Parties.

(*a*) *Vide ante*, p. 388.

LEASE TO ENABLE LESSEE TO APPOINT GAMEKEEPERS.

esquire, and [*Margaret*] his wife (late [*Margaret G.* spinster, and devisee for life of the manors hereinafter mentioned, and intended to be hereby demised, under and by virtue of the last will and testament of [*testator*], late of ——, esquire, her late father, deceased,) of the one part; and [*lessee*], of, &c. esquire, of the other part. WITNESSETH, that for and in consideration of the rent hereinafter reserved and made payable by the said [*lessor*], and for the purpose of enabling him the said [*lessee*], and others by his command or appointment, to hunt, shoot, fowl, fish, and to preserve the game in, over, and through the several manors hereinafter demised, but not further or otherwise, or for any other purpose, or pecuniary benefit, or extension of right, *They* the said [*lessor*], and [*Margaret*] his wife, *have*, and each of them *hath* demised, set, and to farm let; *And* by these presents *do*, and each of them *doth* demise, set, and to farm let unto the said [*lessee*], his executors, administrators, and assigns, ALL THOSE the several manors, &c. *Together* with all the rights, royalties, privileges, and appurtenances, to the same respectively belonging. *Save and except* the right of holding, by appointment or otherwise, any courts leet, courts baron, or other courts; and all benefit or advantage to arise therefrom, in respect of the same manors respectively. TO HAVE AND TO HOLD the same manors (except as aforesaid) unto the said [*lessee*], his executors, administrators, and assigns, from the twenty-fifth day of March now last past, for and *during and unto the full end and term of one whole year thence next ensuing, and fully to be complete and ended; and so forward, from year to year, until six months' notice in writing shall be given by either or any of the said parties to the other or others of them, of his, her, or their intention to determine this present demise, on the twenty-fifth day of March then next ensuing. YIELDING AND PAYING therefore, yearly, and every year during the continuance of this demise, unto the said [*lessor*], and [*Margaret*] his wife, or the person or persons for the time being entitled to the same, the yearly rent or sum of —— pounds, by equal half-yearly payments, (that is to say), on the twenty-fifth day of March and on the twenty-ninth day of Sep-

Reference to will whereby wife of lessor is tenant for life of manors demised.

Testatum.

Demise by husband and wife of

Manors, royalties, &c.

(*except* the right of holding courts.)

Habendum for a year, and from year to year, until notice.

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Reddendum.

LEASE TO ENABLE LESSEE TO APPOINT GAMEKEEPERS.

tember in each and every year; and the first payment thereof to begin and be made at or upon the twenty-ninth day of September next ensuing the date of these presents. And the said [*lessee*], for himself, his heirs, executors, and administrators, doth hereby covenant and declare, with and to the said [*lessor*], his executors, administrators, and assigns, by these presents, in manner following, (that is to say), that he the said [*lessee*], his executors, administrators, or assigns, or some or one of them, shall and will well and truly pay or cause to be paid unto the said [*lessor*] and [*Margaret*] his wife, or other the person or persons for the time being entitled to the same, the said yearly rent or sum of —— pounds hereby reserved, at the times and in manner aforesaid; And also shall and will bear, pay, and discharge all and all manner of taxes, rates and assessments whatsoever, parliamentary or parochial, which are or shall be taxed, charged, or imposed upon all or any of the said manors, or upon any person or persons for, or in respect of the same (the land-tax only excepted). And the said [*lessor*], in consideration of the rent, and a due performance of the covenant last mentioned on the part of the said [*lessee*], for himself, his heirs, executors, and administrators, and for the said [*Margaret*] his wife, doth hereby covenant and declare, with and to the said [*lessee*], his executors, administrators, and assigns, that they the said [*lessor*] and [*Margaret*] his wife, shall and will, at all times during the continuance of this demise, at the request and proper costs and charges, of the said *[*lessee*], his executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful and reasonable acts for the further and better, more perfectly and absolutely demising, assuring, and confirming the same manors unto the said [*lessee*], his executors, administrators, or assigns, according to the true intent and meaning of these presents. In witness, &c.

Covenant by lessee to pay rent;

and all taxes, &c. upon manors.

Covenant by lessor for himself and his wife for further assurance.

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GUARDIAN.

APPOINTMENT *of a* GUARDIAN (*a*) *by an Infant.*

KNOW ALL MEN BY THESE PRESENTS, *That* I [*infant*], of ——, in the county of ——, (daughter of ——,

On guardianship by election.

(*a*) The right of making a guardian by election of the infant himself only arises, when, from a defect of law, the infant finds himself wholly unprovided with a guardian. Harg. n. Co. Litt. 88 b. (16).

Different kinds of guardianship.

For the purpose of ascertaining when the infant may exercise this right, it will be requisite to state a few particulars concerning the different kinds of guardianship.

Guardian in socage;

Guardianship by *socage* springs wholly out of *tenure;* and therefore the title to it cannot arise, unless the infant be seised of [the legal estate in, *Rex* v. *Inhabitants of Toddington*, 1 Barn. & Ald. 560,] lands, or other hereditaments *lying* in tenure holden by socage, as most of the lands in England now are. It takes place on a *descent* only, and the title to it is in such of the infant's next of blood, as cannot have by descent the socage estate, in respect of which the guardianship arises, by descent, without any distinction between the *whole* and *half* blood. Guardianship in socage ends, when the infant, whether male or female, attains fourteen, Hargr. n. Co. Litt. 88 b. (13); 3 Atk. 624; 1 Ves. sen. 91; even although the father be guardian on a maternal, or the mother on a paternal descent. Litt. s. 123. The heir may then elect a guardian, 3 Atk. 624, and at law he is then entitled to occupy the lands himself if he will, and call his guardian to account, although his own parent; Litt. s. 123; for the father or other ancestor, being guardian in socage, shall account with the infant for the profits; otherwise it would be more for the infant's advantage to have another person for his guardian; Co. Lit. 88 b.; 3 Bac. Abr. 404 (*a*). Guardianship by *nurture* only occurs where the infant is without any guardian; and none can have it, except the father or mother. It extends no further than the custody and government of the infant's *person*, and determines at fourteen, in the case both of males and female. Bro. Abr. *Garde*, pl. 70. Guardianship by *nature* is more extensive; for not only the father and mother, 2 Atk. 15, but every other ancestor may be guardians by nature, though with considerable differences, such as denote the

by nurture;

by nature;

late * of —— aforesaid, deceased, and of —— his wife, since also deceased,) being of the age of fourteen years

GUARDIAN.

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superiority of the father's claim. The father has the *first* title to guardianship by nature, the mother the second; and as to other ancestors, if the same infant happens to be heir apparent to two, as to both a peternal and a maternal grandfather, perhaps in this equality of rights, priority of possession of the infant's person may decide the preference, according to the general rule, in *æquali jure melior est conditio possidentis.* Plowd. 296. This guardianship extends no further than the custody of the infant's *person;* Carth. 386; which it yields to the guardian in socage, until the infant attains fourteen; but guardianship by nature continues till the infant attains the age of twenty-one. Hargr. n. Co. Litt. 88 b. (12). 3 Bac. Abr. 404. However, the proper age to apply to the Court of Chancery to remove a parent from being guardian, in a male, is fourteen, in a female, twelve; but the court will never do it without some misbehaviour in the parent. *Roach* v. *Garvan*, 1 Ves. sen. 158. [As to the parental right to the guardianship and custody of infants *vide* the late much discussed case of *Wellesley* v. *Duke of Beaufort*, 2 Russ. 1. *Ball* v. *Ball*, 2 Sim. 35.] By virtue of the 12 Cha. 2, c. 24, s. 8, the father, although under twenty-one, may by deed or will, attested by two witnesses, appoint who shall be guardians of his children after his decease, until they attain twenty-one, or for any less period; and thereby he will disappoint the mother and other ancestors of the guardianship by nature, and the next of blood of the guardianship by socage. This kind of guardian has the custody not only of the lands descended or left by the father, but of all lands and goods any way acquired or purchased by the infant, which the guardian in socage had not. Vaugh. 185-6; 2 Fonbl. Treat. Equity, 225, 5th edit.

by the father's appointment.

The right to elect a guardian may therefore happen *before* fourteen, when the infant, whether male or female, Co. Litt. 88 a, has no such property as attracts a guardianship by tenure, 2 Fonbl. Treat. Equity, 225, 5th edit. and the father is dead, without having executed his power of appointing a guardian for his child, and there is no mother; but if the child be of such tender years that he can make no choice, that is under seven years of age (see Fitzgib. 164), then the next of kin, to whom the inheritance cannot descend, should have the custody of him, Co. Litt. 87 b., until a guardian be properly appointed by the Lord Chancellor, or by the infant himself. Or the right of making a guardian by election may happen *after* fourteen, when the custody of the guardian by socage terminates, and in case of the father's decease, from the want of his appointment, there is no other guardian ready to succeed to the trust, and to take care of the infant or his

An infant above seven, having no guardians, may elect one either before or after fourteen.

GUARDIAN. and * upwards, *have* elected, chosen, nominated, and appointed; *And* by these presents *do* elect, choose, nomi-

property. Hargr. n. C. Litt. 88 b. (16). 1 Bla. Com. 426. And therefore a minor, after fourteen, although freed from custody, is at liberty, if willing, to put himself a second time under guardianship, until he is of full age. But if a minor, being an adult, does not consent to receive a new guardian, then no court would appoint a guardian, unless *ad litem*. Harris's n. Just. Inst. lib. 1. tit. xxiii. s. ii.

The power of infants over their property has been gradually restrained.

Formerly, in case an infant was of the years of discretion, namely, fourteen, any payment made to him would have been good, for at that age the law held him able to govern and manage his own lands in socage and consequently to receive the rents thereof. Wentworth's Office of Executor, 219, Wilson's ed.; 1 Powell's Swinb. on Wills. 295, par. iii. s. xiv. So formerly an infant could be an executor at seventeen; but since the 38 Geo. 3, c. 87, s. 6, he cannot act till he is twenty-one, and where he is sole executor, administration with the will annexed must be granted to his guardian, or to such other person as the spiritual court shall think fit, until the infant attains twenty-one, at which period probate of the will may be granted to him. The power of an infant has been gradually restrained, and he is now thought to stand in need of a guardian of his person and property until twenty-one. See 2 Watk. Cop. 99. As Lord Coke mentions the right of choosing a guardian by a male ward in socage *after* fourteen, Co. Litt. 78 b. even in his time a guardian must have been deemed necessary after that age. But it is remarkable that he omits mentioning it in the case of a female *after* fourteen. However, since the 12 Car. 2, c. 24, s. 8, it has been usual, for want of a guardian by the father's appointment, to allow infants, whether males or females, 1 Bla. Com. 463, and whether heirs or not, (see Hargr. n. Co. Litt. 88 b. (12).) to elect guardians for themselves.

Infant's appointment of guardian does not exclude the jurisdiction of the Court.

[But the appointment of a guardian by the infant himself, even after the age of fourteen, does not exclude the jurisdiction of the Court; and therefore, where a petition for the appointment of a guardian to an infant was resisted on the ground that the infant, who was of the age of seventeen, had by deed appointed a guardian for himself, Sir J. Leach, V. C. referred it to the Master to consider a proper person, observing that the infant's appointment would not supersede the duty and authority of the Court. *Curtis* v. *Rippon*, 4 Madd. 462.]

The election is usually made by deed,

Lord Coke omits stating how, and before whom the election should be made, nor does it appear that any prior or cotemporary writer supplied the defect. Lord Hardwicke said, it was frequently done before a judge on circuit, and that it was the constant practice to allow infants to choose their guardians, and what the Court of Chancery frequently called on infants to do: though he said this still is liable to any reason-

nate, and * appoint, [*guardian*] of ——, aforesaid, guardian of my person and estate, until I shall attain the

GUARDIAN.

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able objection made to such choice. 2 Ves. sen. 375; and see *Savill* v. *Slingsby*, Tothill, 15, where an attachment issued against an infant, to make him choose a guardian; see also Wyatt's Prac. Reg. 213, 223; Finch. Rep. 476; but it is not requisite that the election should be made before a judge. Hargr. n. Co. Litt. 88 b. (16.); 3 Atk. 624; Harr. n. Just. Inst. Lib. i. tit. xxiii. s. ii. The last Lord Baltimore, when he was turned of *eighteen*, having no testamentary guardian, and being under the necessity of having one for some special purposes relative to his proprietary government of Maryland, named a guardian by *deed*. This mode was adopted by the advice of two eminent barristers; for though one of them at first doubted, whether the administration of the government of the province was not devolved upon the crown during the infancy, yet he afterwards concurred in thinking, that the guardian named by the infant might act as lord proprietor. Indeed, it seems as if there was no prescribed form of an infant's electing a guardian after fourteen, any more than there is before; and, therefore, the learned Hargrave says, election by *parol* might perhaps be sufficient, though, he says, it would be wrong to trust to a mode so unsolemn. Hargr. n. Co. Litt. 88 b. (16). The form drawn by the celebrated conveyancer, Sir Orlando Bridgman, is under hand and seal. 1 Bridgman's Conveyances, 249, 5th ed.; and in the present day, the appointment or election is generally also delivered as a deed; and therefore the duty of thirty-five shillings becomes chargeable on it, "as a deed not otherwise charged," under the last stamp act. But it seems, that an appointment under hand and seal, without being delivered as a deed, would be equally effectual; and, unless it be delivered as a deed, a stamp would not be requisite, *vide post*, p. 588, (*d*), 633, 642.

and therefore it requires a deed stamp. But a deed does not appear to be requisite.

The guardian appointed by a male infant after he is fourteen, continues till he is twenty-one; 3 Bac. Abr. 403; 4 Ibid. 138; and does not determine by his marriage. *Mendes* v. *Mendes*, 3 Atk. 625. So likewise a guardian appointed by a female infant after she is fourteen, continues till she is twenty-one, unless she previously marry; for on marriage every kind of guardianship as to a female ceases, *Mendes* v. *Mendes*, 1 Ves. sen. 91, because the husband, immediately on the marriage, becomes her guardian; and it would be inconsistent that she should at the same time be under the power of another guardian. 3 Bac. Abr. 413. However, where a female eleven years of age was sent to France for her education, and being entrusted to the care of a banker at Paris, he married her to his own son, who was not then seventeen years of age, Lord Hardwicke held, that though the Court of Chan-

The guardian of a male infant continues till 21;

of a female, till 21, or marriage.

GUARDIAN.

age of *twenty-one years. AND I do hereby promise to be ruled and governed by him in all things touching my welcery cannot appoint a guardian of a female after marriage, yet it will not determine a guardianship, or discharge any order made for a guardian because of a marriage. *Roach* v. *Garvan*, 1 Ves. sen. 159.

As it is doubtful whether an appointment under 14 continues after that age, a ratification seems prudent afterwards;

It does not appear to be certain whether an appointment of a guardian by an infant above the age of seven, and under the age of fourteen years, continues, after the infant has attained fourteen; but it seems that it continues for the same period as it would if it had been made after fourteen. To avoid this doubt, a ratification of the appointment has sometimes been recommended after the infant arrives at the age of fourteen years, *ut infra*, 411. In which case, if the ratification be delivered it operates as a new deed, and becomes chargeable with another thirty-five shilling stamp. But as to the necessity for delivery, and a stamp, the observations in the preceding page are here equally applicable.

and then, if delivered as a deed, another deed stamp is necessary.

Guardianship cannot be transferred, nor is it transmissible to representatives;

Neither a guardian in socage, Hargr. n. Co. Litt. 88 b. (13); 90 b. (1), *Bedell* v. *Constable*, Vaugh. 181, nor a testamentary guardian, *Mellish* v. *De Costa*, 2 Atk. 14, nor consequently a guardian by election, can assign or transfer the gurdianship to another: neither will it, upon the guardian's death, go to his executors or administrators, nor to the husband of a deceased wife, but it determines. Vaugh. 185. *Eyre* v. *Countess of Shaftesbury*, 2 P. Wms. 121; 1 Wooddes. Lec. 458. And in case a guardian in socage die, the guardianship shall go to the next of kin of the infant to whom the inheritance cannot descend. 2 Inst. 260. For though the office of guardian be an interest, yet it is an interest joined with a trust and confidence, personally reposed in the guardian himself; either by the law, or by the person appointing him, wholly for the infant's benefit, and not in any respect for the guardian's profit. *Shoplane* v. *Roydler*, Cro. Jac. 99; Vaugh. 183; Plowd. Com. 293. But it seems that if two or more are made guardians, and one of them dies, the survivor or survivors will continue guardian; *Eyre* v. *Countess of Shaftesbury*, 2 P. Wms. 104; for, from the nature of the thing, the authority must be joint and several; and were it otherwise, the more guardians were appointed for the security of the infant, the less secure would he be, because upon the death of any one of them, the guardianship would be at an end. 2 P. Wms. 107, 121; 3 Bac. Abr. 407. However, it is usual to expressly appoint the survivors and survivor, guardians and guardian, *ut infra*, 410. [Where several persons are appointed guardians by the Court of Chancery, the office does not survive; *Bradshaw* v. *Bradshaw*, 1 Russ. 528; but the Court will reappoint the survivors, without a reference to the Master. *Hall* v. *Jones*, 2 Sim. 41.]

for it is a personal confidence in the guardian himself.

When there are two or more guardians the office survives.

Guardianship by election is made while the

Some of the purposes for which a guardian by election is appointed while the infant is under fourteen, and has no guardian, are for ena-

*fare. And I do hereby authorize (*b*) and empower the said [*guardian*], to sue for, recover, and receive for my GUARDIAN.

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bling the guardian to make leases of the infant's lands, in which he has only an equitable estate, or in which, although he has the legal estate, yet he took them not by descent, but by purchase; for in neither of these cases is guardianship in socage attracted. *Rex* v. *Toddington*, 1 Barnw. and Ald. 560; *Quadring* v. *Downs*, 2 Mod. 176. But if the infant has any such lands as attracts guardianship in socage, that is, lying in tenure, then the guardianship in socage attracts the custody of the infant's hereditaments not lying in tenure, and of his copyhold estates, unless there is either a special custom for the lord's appointing a guardian of them, Hargr. n. Co. Litt. 88 b. (13), or by the peculiar custom of the manor, the copyhold may by possibility descend to the guardian in socage; 2 Watk. Cop. 102; and the guardian in socage is also, it seems, entitled as well to the custody of the infant's equitable estates in lands, of which there is no trustee expressly appointed, as of those lands which he took by purchase. However, as to leases made by a guardian by election before fourteen, the books are silent.

infant is under 14, for making leases of his lands, of which there is no guardian.

Guardianship in socage attracts guardianship of the infant's hereditaments not lying in tenure, and sometimes of his copyhold estates.

Under a special custom, the lord may appoint a guardian of copyholds.

When, after fourteen, an infant is destitute of a guardian, he sometimes appoints one by election, principally to enable him to make leases of all the infant's lands. As to leases by this guardian, the books are clear; for it is said, the guardian before fourteen (that is, in socage,) as well as he whom the infant thinks fit to choose after fourteen, are both of the same nature, and have the same office and employment assigned to them by the law, without any intervention or direction of the infant himself; for they were therefore appointed because the infant, in regard of his minority, was supposed incapable of managing himself and his estate, and consequently they derive their authority not from the infant, but from the law; and that is the reason they

Guardian by election is appointed after 14, to make leases of all the infant's lands.

(*b*) Sometimes the appointment of a guardian by an infant authorizes the making of leases, &c. yet as appears above, the guardian does not derive his authority from the infant, but from the law, it seems better to omit the enumeration of any particular act which he is to do. The remainder of the above form is subject to the same observation, and is liable to another objection: for it is in the nature of a power of attorney, and an infant cannot appoint an attorney, Perk. s. 13; 2 Inst. 483; 2 Roll. Abr. 2 (E) pl. 4; 3 Bac. Abr. 598, Gwil. ed. *Infancy* (I) 3; excepting to receive livery of seisin, 1 Roll. Abr. 730 (D) 6; but as the whole form is used by some gentlemen, it has therefore been inserted. For the above-mentioned reason, the subsequent forms seem preferable, and they certainly are more generally used.

The appointment of a guardian should be general, without enumerating any particular act which he is to do.

GUARDIAN. *use and benefit, all and every the sums and sum of money to which I am, or may be entitled, on any account what-

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make leases, grant copies of court roll, *Shoplane* v. *Roydler*, Cro. Jac. 99, make distresses for rent of the infant's lands, Bradby on Distresses, 91, and transact all affairs in their own name, and not in the name of the infant, as they would be obliged to do if their authority were derived from him. 3 Bac. Abr. 403; 4 *Ibid.* 138, Gwill. ed. *Guardian* (A.) *Leases* (I) 9. And although there is no authority as to leases of infant's lands taken by purchase, &c. made by guardians elected before fourteen, yet it seems, according to the prevailing opinion, founded on reasonable grounds, that guardians by the election of the infants themselves after they arrive at the age of fourteen, and guardians appointed by the father, or by the Court of Chancery, as well as guardians in socage, have the power of making valid leases of the infant's lands for so long a time as their guardianship continues. See 4 Bac. Abr. 139; Chambers on Leases, 35; 1 Ld. Raym. 131; 1 Leon. 158; Vaugh. 182; Plowd. 293; Cro. Jac. 55, 99; 2 Lev. 219; 2 P. Wms. 105; 3 Atk. 704; 14 Vin. Abr. 185; 2 Watk. Cop. 105. However, it was held in *Roe* v. *Hodgson*, 2 Wils. 129, 135, after the infant had come of age, that a testamentary guardian cannot make a lease of the infant's lands, and that a lease previously made by him for twenty-one years was absolutely void, and not merely voidable. But this decision has not been regarded in practice to the extent the words of the report might have warranted. For independently of the above citations, it is opposed by the great authority of Lord Chief Justice Vaughan, who clearly held that the office of a guardian appointed by the father, under 12 Car. 2, c. 24, as to the duty and power, is the same as the law before had prescribed and settled of guardian in socage, excepting that it may be held for a longer time, namely, till the heir attains the age of twenty-one; *Bedell* v. *Constable*, Vaugh. 179; and no point is more certain, than that a guardian in socage could make valid leases in his own name, to continue during the guardianship. Dr. Wooddeson understood the case of *Roe* v. *Hodgson* to have adjudged, that leases made by a guardian are absolutely void, when the infant attains the age of majority, if the term is then unexpired, without any act done by him to defeat them. 1 Wooddes. Lect. 459. But, he adds, notwithstanding the general expression in the case alluded to, that "a guardian cannot make a lease," it should seem that such demise, to continue during the minority, or any shorter term, must be valid, without resorting to the Lord Chancellor's authority, and a reference to a Master of the Court. [*Vide* Precedent of a Lease by a Guardian and Ward, *post*, Vol. 4, p. 110.]

According to the prevailing opinion, every kind of guardian of the lands may make leases to continue during the guardianship, without resorting to the Lord Chancellor's authority.

A guardian by

Sometimes guardians by election are appointed when the infant is

*soever; *And* on recipt thereof, or of any part thereof, to give good and sufficient discharges for what he shall so re- GUARDIAN.

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destitute of a guardian, and is entitled to a legacy, but the trustees of the will have no authority to advance the interest for maintenance, &c. or where the infant is entitled to a distributive share of an intestate's effects, and in both cases the friends of the infant are desirous of avoiding the expense of an application to the Court of Chancery. The chief end the parties have in view by such an appointment is, that without an application to the Court, there may be some persons recognized by law as capable of taking care of the infant, and directing a proper maintenance and education for him, out of the interest of his property, during infancy. An executor or an administrator might, however, without the direction of the guardians, apply a reasonable part of the interest of the infant's legacy or share, during his infancy, for his maintenance and education; and such payments would be allowed by the Court. For where an executor, *Lee* v. *Brown*, 4 Ves. 369, and consequently an administrator, does, without application, what the Court would have approved, he will not be called to account, and forced to undo it, merely because it was done without application. But the concurrence of the guardian in the payment of maintenance and education is thought to make it much safer. The act of a guardian without authority of the Court, if beneficial to the infant, Lord Eldon said, the Court would *perhaps* ultimately have protected: though had the actual consequence been detrimental to him, that *might* have created some difficulty. *Milner* v. *Harewood*, 18 Ves. 273. The learned Hargrave appears to have thought, that a guardian in socage is entitled to take into his custody the infant's personal estate, except where by the custom of a particular place it happens to be liable to a different custody; his idea being, that the custody of the infant's person draws after it the custody of every species of property, for which the law has not otherwise provided. Hargr. n. Co. Litt. 88 b. (16). But see Wentworth's Office of Executor, 220, from which it seems, that in his time, payment of a legacy to the guardian of the *lands* was not a proper payment. *Vide ante*, p. 400. And although Mr. Hargrave's opinion is not sanctioned by the modern practice of the Court of Chancery, and is opposed by an expression of Lord Chief Justice Vaughan, in his Reports, 186, *ante*, p. 399, yet as a guardian by election has the same power and authority as a guardian in socage, there have been instances in which, under the authority of Mr. Hargrave's opinion, executors and administrators have paid infants' legacies and distributive shares to their guardians by election. Sometimes this has been done on an indemnity by the guardians, from all actions and claims in consequence of making

election is appointed when an infant is entitled to a legacy or share of an intestate's estate, and his friends wish to avoid applications to Chancery.

An executor may allow an infant maintenance, &c. out of the interest of his legacy.

Mr. Hargrave was of opinion that the guardian in socage was entitled to the custody of the infant's personal estate; but this opinion cannot be safely followed.

Instances in which payments of legacies have been made to guardians by election; but these are not prudent payments.

GUARDIAN.

*ceive; *And* to apply and dispose of the same as he shall think most for my benefit and advantage; I hereby giving

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the payment; and in other instances the money has been invested in the three per cent. consols, in the names of the executor or administrator, and of the guardians, in trust for the infants. However, this is not a prudent course for the executor or administrator to pursue. For the Court of Chancery has compelled an executor to repay a legacy, which he had previously paid to the father, the natural guardian of an infant entitled to it, in order, as the Lord Chancellor said, not to encourage payments to parents and guardians in wrong of infant children. *Dagley* v. *Tolferry*, 1 P. Wms. 285. *Doyley* v. *Tollferry*, 1 Eq. Ca. Abr. 300, pl. 2. *Dawley* v. *Ballfrey*, Gilb. Eq. Ca. 103. S. C. See *Campart* v. *Campart*, 3 Bro. C. C. 195. And see *Holloway* v. *Collins*, 1 Chan. Ca. 245, nearly to the same effect. See also *Philips* v. *Paget*, 2 Atk. 80. *Cooper* v. *Thornton*, 3 Bro. C. C. 96. *Whopham* v. *Wingfield*, 4 Ves. 630. And when the infant's money is invested in the names of the executor or administrator, and of the guardians, there is a possibility of danger in doing it; for in case the executor should die, and the stock be sold out by the survivor, and misapplied, the infant might then call on the representatives of the administrator for repayment of the money. The direct and safe course for the executor or administrator† to pursue in such a case, is to pay the infant's legacy or share, after deducting the duty, into the Bank of England, with the privity of the accountant-general of the Court of Chancery, to the account of the infant; or if more than one, to the account of the respective infants; which, after payment of the duty, will be a sufficient discharge for the money so paid; and such money, when paid in, will be laid out by the accountant-general without any formal request for that purpose, in the purchase of three per cent. consols, which, with the dividends thereon, will be transferred and paid to the person or persons entitled thereto, or otherwise applied for his or their benefit, on applicatiou to the Court of Chancery, by petition or motion in a summary way, by virtue of the statute of 36 Geo. 3, c. 52, s. 32.

Payments of legacies to parents or guardians, not good.

The safe course for an executor or administrator to pursue is, to pay the infant's money into the bank.

Payment to the father directed, where.

[Where a legacy is small and the infant has no other provision, the Court will direct the interest to be paid to their father for maintenance without a reference; *Ex parte Dudley*, 1 Jac. & W. 254, n.; and the same has sometimes been done as to the principal; *Ex parte Green*, 1 Jac. & Walk. 253. It is frequently convenient in giving small legacies to infants to authorize the payment of them to parents or guardians for

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† Probably it would be beneficial if the legislature should extend this provision to trustees for infants.—*Note by Mr. B.*

*and granting unto the said [*guardian*] my full power in the premises: And whatsoever he shall lawfully do, or GUARDIAN.

their use, in order to avoid the necessity of making any application to the Court, or using other means for the indemnity of the executors. As to legacies to infants, see Rop. Leg. by White, Vol. 1.]

When there is no other guardian, it seems that a guardian by election may make a valid consent to the infant's marriage.

A guardian by election, being a "guardian of the person lawfully appointed," it seems, that the consent of such a guardian would be a sufficient consent to the marriage of the infant, where there is no father, or any other guardian. See 26 Geo. 2, c. 32. 3 Geo. 4, c. 75, s. 9. However, this mode has not been resorted to when an opportunity occurred; for under the old marriage act, an application was made to the Court of Chancery by petition, on behalf of a female infant, in the twentieth year of her age, whose father and mother were both dead, and who had no guardian, nor any property, real or personal, praying that her brother might be appointed her guardian, for the purpose of giving a legal consent to her marriage; on which petition Sir Thomas Plumer, V. C. made an order accordingly. In the matter of *Woolscombe*, an infant, 1 Madd. Rep. 215, a similar order was made by his Honour in the preceding term, after looking into the Marriage Act, 26 Geo. 2, c. 32, s. 11, which refers to the Chancellor for the appointment of a guardian to consent to marriage, where the infant is without a guardian, and the mother is not living. [See 1 Christ. Bla. Com. 438, (8).† In *Horner* v. *Liddiard*, Sir Wm. Scott construes the words *a guardian lawfully appointed*, to mean a guardian appointed by the father only. He cites no authority for this construction. See Dr. Croke's statement of the case, p. 180.—*Note by Mr. B.*] [The late Marriage Act, 4 Geo. 4, c. 76, authorizes the father, if living, and if dead, the guardian appointed by the Court, and if there be no guardian, the mother, being unmarried, to give consent, and in case of incapacity, unreasonable refusal, &c. empowers the Lord Chancellor, Master of the Rolls, or Vice Chancellor, upon petition, to decide upon the eligibility of the marriage.]

But for this purpose a Chancery guardian has been sometimes appointed.

The Lord Chancellor may appoint a guardian, and remove all kinds of guardians, for improper conduct.

Where an infant is destitute of a guardian, the Lord Chancellor has the power of appointing a guardian of his person and estate. Hargr. n. Co. Litt. 88 b. (16). 2 Fonbl. Treat. Equity, 226 (*a*). But it seems that this right cannot be excercised after fourteen, without the infant's consent. *Vide ante*, p. 400. And if a guardian appointed by the father die, or refuse to take upon himself the guardianship, or becomes a lunatic, or is otherwise incapacitated to execute the trust reposed in him, the Lord Chancellor may appoint a proper guardian. So if either a common law guardian, or a guardian by election, or a testamentary guardian, abuse the trust, by doing any thing prejudicial either to the person of

† Where Mr. Christian thinks a guardian in socage may consent to an infant's marriage.

GUARDIAN

*cause to be done by virtue hereof, I do hereby promise to ratify and confirm. In WITNESS whereof I have here-

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the infant or his estate, the Court of Chancery may either totally remove him and appoint another guardian, or else impose such terms on him, by obliging him to give security, &c. as will effectually hinder him from doing any thing prejudicial to the infant. 3 Bac. Abr. 407, 410. *Goodall* v. *Harris*, 2 P. Wms. 560. *Duke of Beaufort* v. *Berty*, 1 P. Wms. 704. 1 Wooddes. 461.

The ecclesiastical court can only appoint a guardian *ad litem*;

The right of the ecclesiastical court to appoint guardians of the personal estate of infants, has in modern times been treated as a presumption, and has been confined merely to the appointment of guardians *ad litem*, on the ground that it would break in upon the jurisdiction of the Court of Chancery, relating to the guardianship of infants. *Buck* v. *Draper*, 3 Atk. 631. *Rex* v. *Delaval*, 3 Burr. 1436. 3 Bac. Abr. Gwill. ed. 411. But the power, of appointing a guardian *ad litem* is incident to all courts. Hargr. n. Co. Litt. 88 b. (16), *fourth*.

which is incident to all courts.

The Court of Chancery will appoint those persons *guardians of a natural child* whom the father nominates.

Although a father cannot appoint testamentary or any other guardians to his *natural child*, yet where he names persons in his will as guardians, the Court of Chancery will, on petition, appoint those persons guardians; and, as it has been held, without a reference to the master. *Ward* v. *St. Paul*, 2 Bro. C. C. 583. *Peckham* v. *Peckham*, Ibid. 2 Cox, 46, S. C. But in *Elwes* v. *Const*, 10 Feb. 1818, 1 Madd. Chanc. 2d. ed., V. C. Leach held a reference was necessary, to see if they were fit and proper persons.

No person can claim the right of being guardian to a natural child.

Where a natural child is destitute of a guardian, in order to save the expense of applying to the Court, he sometimes appoints one by election, both before and after fourteen, to enable the guardian to make leases of the infant's lands, and to take care of his property and person. For a bastard being considered, as it were, the first of his family, he cannot by law be heir either to his father or his mother; consequently he cannot take by descent; in which case only guardianship in socage arises; *ante*, p. 398; and as he has no legal relations, excepting those who spring from his body, no person can claim the right of being his guardian. *Vide* Noy's Maxims, 238, 9th edit. *Hugh Revel's case*, 1 Hargrave's † Juridical Arguments, 397.

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† It seems that the guardian, by election, of an illegitimate infant may make a valid consent to the infant's marriage. But in a note to the 18th edit. of Blackstone's Commentaries, Vol. 1, p. 438, (2), it is said, "Illegitimate children have been held to be within the operation of the Marriage Act; but where the putative father is dead, in order to legalize their marriage, it is necessary to have the consent of a guardian appointed by the Court of Chancery. *Priestley* v. *Hughes*, E. T. 49 Geo. 3."—*Note by Mr. B.*]

unto set my hand and seal the —— day of —— in the year of our Lord 18—. GUARDIAN.

SIGNED, SEALED, AND DELIVERED, (being first duly stamped (*c*),) in the presence of }

(*c*) As to the stamp, *vide ante*, p. 401. Stamp.

A short Form of an APPOINTMENT *of a* GUARDIAN *by an Infant.*

KNOW ALL MEN BY THESE PRESENTS, *That* I [*infant*], of, &c. spinster, aged —— years, or thereabouts, daughter of ——, late of, &c. deceased (*a*), by —— his wife, also deceased, *have* chosen, nominated, and appointed; *And* by these presents *do* choose, nominate, and

(*a*) An infant having lands or hereditaments which do not attract guardianship in socage (*vide ante*, pp. 402-3), may, it seems, before fourteen, elect a guardian of such lands or hereditaments, notwithstanding his parents are living. So after fourteen, when the guardianship in socage terminates, the infant may exercise his right, although he has parents. For although guardianship by nature continues, notwithstanding the determination of guardianship in socage, yet guardianship by nature only attracts the custody of the infant's person, *ante*, p. 399; but it is not common to elect a guardian when there is a lawful parent living, except it be for the purpose of enabling the guardian to make leases. For whether a parent, Litt. s. 123; *Morgan* v. *Morgan*, 1 Atk. 489, or a stranger enter on the lands of an infant, and take the profits, he will be considered, both at law and in equity, as entering as guardian, and will be accountable as such, until the heir comes to the age of fourteen years. But for the profits received after the heir comes to the age of fourteen years, the person receiving must in that case be charged as bailiff. F. N. B. 111. B.; Noy's Max. 38; Co. Litt. 89 a.; Sullivan's Lect. 128, 129, 2d edit. *Dormer* v. *Fortescue*, 3 Atk. 131.

In some cases an infant may elect a guardian, although he has parents.

Whoever takes the profits of an infant's estate, will be accountable as guardian or bailiff.

GUARDIAN.

appoint [*guardian*], of, &c. to be my guardian, to do, execute, and perform, during my minority, all such acts, matters, and things whatsoever, for me, and in my behalf, relating to me and my estate, as a guardian may or ought to do (*b*). IN WITNESS, &c.

(*b*) To prevent the necessity of having recourse to the Lord Chancellor, in consequence of the guardian's incapacity or refusal to act, it seems advisable to add.

Guardianship to cease on guardian's incapacity, &c.

"BUT such guardianship to cease in case the said [*guardian*] should go to reside abroad, refuse, or become incapable to act in the said guardianship, or become bankrupt, or insolvent."

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GUARDIAN BY SEVERAL.

An APPOINTMENT *of* GUARDIANS *by several Infants by one deed, with a subsequent* RATIFICATION *by such of them as afterwards attained Fourteen Years of Age.*

KNOW ALL MEN BY THESE PRESENTS *That* WE the five infant children of ——, late of ——, in the county of ——, deceased, by —— his wife, also deceased, namely, [*A. B.*] of ——, in the county of ——, spinster, an infant of the age of twenty years, or thereabouts; [*C. B.*], of ——, aforesaid, carpenter, an infant of the age of seventeen years, or thereabouts; [*E. B.*], of ——, aforesaid; spinster, an infant of the age of fourteen years or thereabouts; [*G. B.*], of ——, aforesaid, spinster, an infant of the age of twelve years, or thereabouts; and [*I. B.*], of ——, aforesaid, spinster, an infant of the age of ten years, or thereabouts, *have*, and each and every of us *hath* elected, nominated, and appointed, *And* by these presents *do*, and each and every of us *doth* elect, nominate, and appoint [*guardian*], of —— aforesaid, merchant,

[*other guardian*], of ——, in the said county of ——, gentleman; and [*other guardian*] of ——, aforesaid, shipwright, and the survivors and survivor of them (*a*), guardians and guardian, curators and curator of our persons respectively, and of our real and personal estates respectively, until we shall respectively attain the age of twenty-one years: AND to do, execute, and perform, during our respective minorities, all such acts, matters, and things whatsoever, for us respectively, and in our behalf respectively, relating to us respectively, and our respective estates, as guardians or curators, or guardian and curator, may or ought to do (*b*). IN WITNESS *whereof, we have [*411] hereunto set our hands and seals, the —— day of ——, in the —— year of the reign of *George* the Fourth, &c. and in the year of our Lord, 18—.

GUARDIAN BY SEVERAL.

SIGNED, SEALED, AND DELIVERED, by the above named [*A. B.* &c.] (being first duly stamped (*c*),) in the presence of

BE IT REMEMBERED, that on this present day, the abovenamed [*G. B.*], being now of the age of fourteen years, did ratify (*d*) and confirm the election, nomination,

SUBSEQUENT RATIFICATION.

(*a*) A guardianship devised to three, without saying and to the survivor of them, yet the survivor shall have it. 2 P. Wms. 103.

(*b*) To prevent the necessity of having recourse to the Lord Chancellor, in consequence of any of the guardians' incapacity or refusal to act, it seems advisable to add,

"*But* such guardianship to cease as to each, any, or either of the guardians who shall go to reside abroad, refuse, or become incapable to act in the said guardianship, or become bankrupt or insolvent."

Guardianship to cease as to each guardian who becomes incapable to act, &c.

(*c*) As to the stamp, *vide ante*, p. 401.

Stamp.

(*d*) *Vide ante*, 402.

GUARDIAN BY SEVERAL.

and appointment above made. In WITNESS whereof she hath hereunto set her hand and seal, the —— day of ——, in the —— year, &c.

SIGNED, SEALED, AND DELIVERED, by the above named [*G. B.*] (being first duly stamped (*e*),) in the presence of

Stamp.

(*e*) As to the stamp, *vide ante*, p. 402.

[412]

RECEIVER BY DEMISE ON GRANT OF ANNUITY.

APPOINTMENT *of a* RECEIVER *by* DEMISE, *upon granting an* ANNUITY.

THIS INDENTURE, made the —— day of ——, in the —— year of *George* the *Fourth*, &c. and in the year of our Lord 18—; BETWEEN [*grantor*], of, &c. of the first part; [*trustee*] (*a*), of, &c. of the second part; [*grantee*], of, &c. of the third part; and [*receiver*] (*b*),

Parties.

(*a*) See the reason why the trustee is made a party, *post*, p. 418.

A receiver appointed by deed derives his authority wholly from the deed, while a receiver appointed by the Court of Chancery derives his authority from the court.

(*b*) The nature of the office, power, and authority, of a receiver appointed by deed, and of a receiver appointed by the Court of Chancery, is totally different; for, as the first derives his authority wholly from the deed, he cannot go beyond the powers thereby given. The other is an officer of the court, and acts under its direction; and therefore being in many respects guarded and protected by its transcendant authority, he is invested with some powers, which our law of tenures renders impossible for private individuals to confer, by way of authority. The numerous cases to be found in the reports respecting receivers, relate almost exclusively to those appointed by the Court; but the principles which regulate their proceedings have only a partial connexion by analogy to a receiver appointed by deed. It is for the above reason that,

of, &c. of the fourth *part. WHEREAS the said [*grantor*] hath contracted and agreed with the said [*grantee*]

RECEIVER BY DEMISE ON GRANT OF ANNUITY.

Recital of contract for sale of an annuity for 99 years, if the grantor should so long live.

in a deed of receivership, the powers and liabilities of the receiver are clearly defined.

The Court of Chancery will not appoint a trustee a receiver of the estate where he is an accounting party, because he ought to check the receiver. *Anonymous*, 3 Ves. 516. Nor will the court appoint a trustee and executor receiver, although there are others joined with him in the trust; for the testator meant to have the benefit of the exertion and management of all whom he named, and it would be a mode of giving a trustee emolument who ought to manage and receive without gratuity. ——— v. *Jolland*, 8 Ves. 72. And in case the trustee has, either in himself or jointly with another, a power of leasing, the *cestui que trust* would lose the benefit of the trustee's knowledge and superintendence as a check, and he would be exposed to the temptation of immediate increase of emolument by an immediate increase of rent; and one of the principal duties of the court is, to take care that the most shall be made of the estate during minority, with a view to the interest of the inheritance, not the immediate income. *Sutton* v. *Jones*, 15 Ves. 588. Therefore if a trustee has been appointed a receiver by the Master, the court will discharge the receiver from his office. 8 Ves. 73. However, the court will appoint a trustee receiver, if he will act without emolument; and, if no other person can be procured, the court will appoint a trustee receiver with emolument. *Sykes* v. *Hastings*, 11 Ves. 364.

The Court of Chancery will not appoint a trustee receiver, unless he will act without emolument, or no other person can be procured.

But it is no objection to a trustee being appointed a receiver if he be a trustee merely for preserving contingent remainders, or if he be a trustee with a power of sale and exchange at a future period, and which cannot be exercised during his receivership. *Sutton* v. *Jones*, 15 Ves. 587.

A nominal trustee may be a receiver.

These equitable principles do not, however, extend to a receiver appointed by deed, where the persons beneficially interested at the time are *sui juris*; and therefore in an annuity, mortgage, or any other transaction, a trustee of the estate may be appointed a receiver; but in that case the amount of the compensation which he is to have as receiver, should be distinctly stated in the deed; for as trustee he is entitled to no allowance for his trouble, unless there be in the deed a special provision for that purpose. However it is not usual in practice, in any case, to appoint a trustee receiver by deed, although there appears to be no other objection to such an appointment than the seeming impropriety of uniting in the same person two apparently incompatible of-

Where the parties beneficially interested are *sui juris* at the time, a trustee may be appointed receiver by deed; but it is not usual.

RECEIVER BY DEMISE ON GRANT OF ANNUITY.

for the absolute sale to *him of a clear annuity, or yearly rent-charge of [*annuity*] pounds, to be paid to the said

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fices; but which objection might, perhaps, in some instances, not appear to the parties interested to be of a very formidable nature.

A mortgagee cannot be a receiver with a salary.

A mortgagee cannot stipulate to be receiver of the rents and profits with a commission. In one case it has been considered by the Court of King's Bench usurious. *Scott* v. *Brest*, 2 Durnf. & East, 238. But it has long been determined in the Court of Chancery, that though a mortgagee may stipulate for a receiver to be paid by the mortgagor, and may appoint a baliff, &c. yet he cannot himself stipulate for any advantage beyond the interest. And though it seems to make little difference to the mortgagor who is the receiver, yet the Court of Chancery considers it as tending to usury and oppression, and a collateral advantage which a man contracting for a loan of money shall not make. *Chambers* v. *Goldwin*, 9 Ves. 272; *French* v. *Baron*, 2 Atk. 120.

The annuitant is not usually appointed the receiver.

But, on principle, that objection cannot extend to an annuitant, because the annuity is not in the nature of a loan. However, it is not usual to appoint the annuitant the receiver.

The person having the legal estate may appoint a receiver with an allowance, although there be no express power for that purpose; but he will be answerable for the receiver's deficiencies.

If no receiver has been previously appointed, and from the nature of the property one be requisite, the person having the legal estate may appoint a receiver when the annuity becomes in arrears. *Jenkins* v. *Milford*, 1 Jac. & Walk. 630. For a mortgagee in possession, or a trustee, and consequently an annuitant, where he is himself the trustee, is not bound to be his own bailiff; and if either of them manage the estate himself, there is no allowance made to him for his care and pains; but if either of them employ a skilful bailiff, and for his trouble give him a reasonable compensation out of the rent and profits, the Court of Chancery allows of the payment. *Bonithon* v. *Hockmore*, 1 Vern. 316. The most usual remuneration to a receiver appointed by deed is one shilling in the pound on the rents received, which sum has been allowed by the Court, where the rents arose from several small houses; *Davis* v. *Dendy*, 3 Madd. Rep. 170; but where the rent arises from large farms, sixpence in the pound is sometimes the stipulated allowance. A trustee or an executor, having no allowance for his trouble, is allowed many charges and expenses which a receiver, who has a salary, is not allowed. *Potts* v. *Leighton*, 15 Ves. 276. But a trustee may be allowed a compensation for his trouble if there be an express provision for that purpose in the deed creating the trust; but not, it seems, if the agreement for an allowance to a trustee be subsequent, excepting it be under extraordinary circumstances. *Gould* v. *Fleetwood*, 3 P. Wms. 251, n.; *Ayliffe* v. *Murray*, 2 Atk. 60. It is otherwise as to a mortgagee. *Chambers* v. *Gold-*

A mortgagee or trustee has no allowance for his trouble.

Receiver's salary usually one shilling in the pound, but sometimes only sixpence.

A trustee may be allowed for his trouble under an express provision:

but a mortgagee

[*grantee*], his executors, *administrators, and assigns, for and during the term of ninety-nine years, if the said

RECEIVER BY DEMISE ON GRANT OF ANNUITY.

win, 9 Ves. 272. And where the mortgagee was the attorney of the mortgagor, and in an account settled between them had charged poundage for having received the rents, which were very small, and the collection troublesome, and in consequence thereof the mortgagee was entitled to have a receiver at the mortgagor's expense, yet Sir Wm. Grant, Master of the Rolls, disallowed the charge; for, he said, the court does not permit a man to get out of the rule by showing that he was in a situation in which it would have been justifiable to have had a receiver appointed. He is not permitted to show that cause did exist. Nothing is considered as evidence that the appointment of a receiver was necessary, but that appointment itself; and the Court takes the circumstance that a receiver was not appointed, as evidence that a receiver was not necessary. As to the acquiescence, whatever may be the effect of acquiescence in general, the relation of these parties prevents it in this instance: the one an attorney, and not only an attorney, but the attorney of the other party. The former was acquainted with the rule of the court, the other was not. It was the duty of the attorney to inform his client, that he was not to allow that charge, if another person had been the mortgagee; informing him also that the appointment of a receiver would be the consequence; but that was for the consideration of the client, so informed. In this case that information was not given to the client. The mortgagee claimed this allowance as of right, not stating the objection. The mortgagor allowed it, not aware of the objection; in that article, therefore, the account is impeached as erroneous. I do not enter into the distinction between the cases of an article allowed from ignorance of the law, and from ignorance of the fact. The reason of the admission is not material. He has not given his assent; that is, what the Court holds a binding assent. I do not mean to say generally, that ignorance of the law will open an account; but, as between these parties, standing in this relation to each other, liberty must be given to surcharge and falsify. *Langstaffe* v. *Fenwick*, 10 Ves. 405. So in *Carew* v. *Johnston*, 2 Scho. and Lef. 301, an ex parte report of the Master charged receiver's fees; but Lord Redesdale said, a mortgagee is not entitled to receiver's fees for himself; he is, if he pays a receiver. But the evidence was, that he received for himself. This, therefore, was fraudulently erroneous, and taking an advantage to himself which the mortgagee had no right to.

cannot in any case; and where poundage for receiving had been allowed to a mortgagee, the attorney of the mortgagor, in an account settled, the court opened the account and disallowed the charge.

In *Godfrey* v. *Watson*, 3 Atk. 518, Lord Hardwicke said, that a mortgagee shall not be allowed for his trouble in receiving the rents of the estate himself; but if an estate lies at such a distance from the place

Formerly thought that a mortgagee should be

RECEIVER BY DEMISE, ON GRANT OF ANNUITY.

[*grantor*] should so long *live (*c*); *subject* nevertheless to such power of repurchase as is thereinafter contained, at

allowed for a receiver, only where the estate was at a distance;

but the necessity of a receiver seems principally to depend on the degree of trouble necessary to collect the rents.

of his residence as he must have employed a bailiff, if it had been his own, he shall then be allowed such sums as he has paid to a bailiff to receive the rents of this estate. The modern rule does not seem to depend so much on the degree of distance of the estate from the residence of the mortgagee, &c. as the degree of trouble. Thus, where a mortgage of twenty leasehold houses in the parish of St. Andrew, Holborn, was assigned to a trustee who lived in Chancery Lane, near the houses, in trust for a person (since deceased,) who resided at Dorking; Sir John Leach, Vice-Chancellor, said, a mortgagee cannot be paid as a receiver, nor can he, generally and universally, when he takes possession, appoint a receiver. But if the nature of the estate be such, that great time and trouble must be sacrificed in the receipt of the rents, he may appoint a receiver. Here the mortgagee resided at Dorking, and the mortgaged property was of such a description, that a provident owner of the estate, whose time was of value to him, would probably have thought it right to appoint a receiver. The trustee's residence is immaterial: he was not the person beneficially entitled, nor the person to receive the rents. The charge, therefore, in respect of a receiver during the life of the assignee of the mortgagee, must be allowed. The testator died in 1810, and appointed the defendants executors and residuary legatees. The latter circumstance I lay out of the question. After the death of the assignee of the mortgagee, the executors received the rents up to the year 1813, and then appointed a receiver. As the assignee of the mortgage could not have charged for a receiver, if he had himself received the rents, so his executors, so long as they received the rents, can make no charge for a receiver; but they may charge from the time when they appointed a receiver. *Davis* v. *Dendy* and others, 3 Madd. 172.

The trustee's residence is immaterial.

Executors of a mortgagee, whether they be, or be not, his residuary legatees, cannot charge for a receiver while they received the rents.

Persons appointing a receiver where they are not authorized to do it, are answerable for his deficiencies;

but where the deed authorizes an appointment, it is otherwise.

Trustees and executors, not beneficially interested, cannot be generally advised to appoint a receiver, where they have no authority for that purpose; for unless the deed or will authorizes the appointment, the trustee or other person appointing the receiver, will be answerable for him in all events. *Anonymous*, 12 Mod. 560. But if the deed or will authorizes the appointment of a receiver or agent, and one be appointed, who at the time of his appointment is solvent and in good circumstances, though he should afterwards become insolvent, the person appointing shall not answer for him. However, it is otherwise if he were not solvent at the time he was appointed. 12 Mod. 560. But where a debtor conveyed an estate to two trustees, appointed by his creditors in pursuance of a previous agreement, and the creditors permitted the acting trustee to

But if the receiver be permitted to retain the rents an un-

(*c*) This mode is now generally adopted, *vide ante*, p. 184 (*c*), 351 (*i*).

or for the price or sum of *[*consideration money*] pounds. And whereas by an indenture, bearing date the day

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retain in his hands, for about three years, a sum belonging to the trust fund, which he had received out of the rents of the estate, Lord Manners held, on the trustee's bankruptcy, that as the debtor did not appoint the trustees, and had no power to remove them, the loss must fall on the creditors. For the creditors being the persons most interested in the conduct and punctuality of those trustees, and in the manner the rents were to be applied; the trustees must therefore be considered as the agents of the creditors who appointed them. *Hutchinson* v. *Lord Massareene*, 2 Ball and Bea. 54. See also *Anonymous*, 1 Salk. 153; *Juxon* v. *Brian*, Prec. Chan. 143; *Carter* v. *Barnardiston*, 1 P. Wms. 518.

reasonable time and become insolvent, the estate will be discharged from the loss.

Receivers appointed by the Court of Chancery are to pass annual or half-yearly accounts, as the rents and profits are received. *Potts* v. *Leighton*, 15 Ves. 577. And by the general order of the court, 23d April, 1796, 15 Ves. 278, receivers must annually pass their accounts and pay in their balances, or lose their salaries and be charged with interest at five per cent. ——— v. *Jolland*, 8 Ves. 72; *White* v. *Lady Lincoln*, 8 Ves. 571; although the money be only kept back a quarter of a year after it ought to have been paid in. *Fletcher* v. *Dodd*, 1 Ves. jun. 85. Receivers appointed by deed are not subject to this rule, and therefore it is always prudent to call on them to account regularly as the money is received.

Chancery receivers must pass their accounts annually.

Receivers appointed by deed should be called on to account regularly.

In *Rigge* v. *Bowater*, 3 Bro. C. C. 365, Lord Thurlow intimated his opinion, (without deciding the case,) that if a receiver be appointed by the court, upon the application of a mortgagee or other incumbrancer, and he afterwards embezzle or otherwise waste the rents and profits, the loss must fall on the mortgagor. The reason is, it seems, the receiver is the officer of the Court. 2 Ball and Bea. 55.

The estate must bear a loss occasioned by a receiver appointed by the court.

However, if there be no receiver appointed by the deed, and the mortgagee has the legal estate, he cannot have a receiver appointed by the Court of Chancery, but he must recover the possession by ejectment. *Berney* v. *Sewell*, 1 Jack. & Walk. 648. Yet if there be a prior mortgagee who is not in possession, a second or equitable mortgagee may have a receiver appointed by the Court, without prejudice to the prior mortgagee's taking possession; but if he be in possession, the second mortgagee cannot have a receiver appointed: he must redeem him; and then in taking the accounts, the prior mortgagee will not be allowed any sums he may have paid over to the mortgagor, after notice of the subsequent incumbrance. *Ibid.* 649; *Bryan* v. *Cormick*, 1 Cox, 423; *Dalmer* v. *Dashwood*, 2 Cox, 378; *Quarrell* v. *Beckford*, 13 Ves. 377; *Parker* v. *Calcraft*, 6 Madd. 11. [And see *post*, Vol. 5, p. 433.]

If the mortgagee has the legal estate, the Court will not appoint a receiver.

If a prior mortgagee be not in possession, the Court will appoint a receiver for a subsequent mortgagee, without prejudice to the first.

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Recital of

next before the day of the date of these presents, and made between the said [*grantor*] of the first part, the said [*grantee*] of the second part, and [*trustee*] of the third part; in consideration of the said sum of [*consideration money*] pounds to the said [*grantor*] paid by the said [*grantee*]; *he* the said [*grantor*] *did* grant and confirm unto the said [*grantee*], his executors, administrators, and assigns, *One* annuity, or clear yearly rent-charge of [*annuity*] pounds, to be chargeable upon, and issuing out of the manor, rectory, messuages, lands, tenements, and hereditaments intended to be hereby demised, with the appurtenances, during the term of ninety-nine years, if the said [*grantor*] should so long live, and to be paid and payable to the said [*grantee*], his executors, administrators, and assigns, at or in the common dining hall of Lincoln's Inn, in the said county of Middlesex, by four *equal quarterly payments, between the hours of eleven and twelve of the clock in the forenoon of the several and respective days following; that is to say, the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, without any deduction or abatement whatsoever; the first of the said quarterly payments to be made on the —— day of —— now next ensuing; and in case of the decease of the said [*grantor*] between any of the said quarterly days of payment, then also a proportional part of the said annuity or yearly rent of [*annuity*] pounds, for the time, which at the decease of the said [*grantor*] shall have elapsed of the quarterly payment thereof, then growing due; such proportional part to be paid within ten days next after the decease of the said [*grantor*]. And (*d*) by

grant of

annuity,

charged on lands,

for 99 years, if the grantor should so long live;

payable quarterly;

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with proportional part to grantor's death.

Recital of demise to trustee,

Where a receiver is appointed without a demise to him, the trustee of the term should be a party to the deed to authorize a distress being made in his name, he

(*d*) Some gentlemen omit the recital of the demise to the trustee, and make the grantor alone demise the estate to the receiver, by direction of the grantee. But as reference is made by the deed appointing the receiver, to the deed granting the annuity, if the annuity deed were produced, it would immediately appear that the grantor had previously conveyed to the trustee the immediate legal estate in reversion, and, consequently, that the trustee was the only person entitled to distrain, or to authorize a distress, on the tenant in possession of the lands. *Jenkins* v. *Milford*, 1 Jac. and Walk. 629, *ante*, p. 342; *Gregory* v. *Henderson*,

*the same indenture, the said [*grantor*], for the consideration aforesaid, and also in consideration of five shillings

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4 Taunt. 772. Therefore, unless the receiver distrained as the bailiff of the trustee, the distress could not be supported, at least as to tenants whose leases were granted prior to the annuity, or afterwards, not by indenture. *Vide ante*, p. 301. For, generally, a distress for rent must be made by, or in the name of the person appearing to have the immediate legal estate in reversion, *Pitt* v. *Snowden*, 3 Atk. 750; *Hughes* v. *Hughes*, 3 Bro. C. C. 87, as he alone possesses a privity of estate with the tenant in possession; 1 Ves. Jun. 161, *S. C.*; and who, consequently, is the tenant of the person having that legal estate. *Griffith* v. *Griffith*, 2 Ves. Sen. 401. So that if the trustee do not join in the demise, the receiver must distrain as his bailiff; in which case, if there be no previous authority, a subsequent assent would excuse him from being punished as a trespasser. 2 Leon. 196. But a previous authority in writing is always desirable when a distress is made by a bailiff; for he ought, if he be required, to show the cause why he made the distress; yet if he be not required, then he is not bound to show it. And if the bailiff, upon making the distress, shows the cause and reason of it, he cannot afterwards vary from it: but if he distrain generally, without showing any cause, then he is at liberty afterwards to show what cause he thinks fit. *Buller's case*, 1 Leon. 50. [See further, Serjt. Wms. n. 1 Saund. 347 c. (4.)]. To prevent the necessity of having an express authority from the trustee or his representatives, every time a distress is made, and to prevent the trouble and delay which must be thereby occasioned, it seems prudent invariably to make the trustee a party to the appointment, if it be in the nature of a power of attorney.

having the immediate legal estate in reversion.

But as it appears, *ante*, p. 300 (*l*), 304, that an appointment of a receiver by demise, as in the above form, is preferable to a simple appointment in the nature of a power of attorney, *ut ante*, p. 301; and as the trustee has the immediate legal estate in reversion, expectant on the estates of the tenants in possession, it seems generally prudent to make the trustee a party to the demise to the receiver. For the trustee will notwithstanding retain a reversion, as the term in him is for ninety-nine years, if the grantor should so long live; while the term in the receiver is for ninety-nine years, if the grantor and receiver should both of them so long live. And if, notwithstanding the declaration that the term in the receiver shall not prevent the trustee from executing the trusts of his terms, it should be thought that if the deed of receivership were produced, the term in the receiver would prevent the trustee from recovering in ejectment, a power is inserted, enabling the grantee at any time to destroy the term vested in the receiver.

But to prevent the determination of the receiver's authority by the death of the trustee, and to enable the receiver to distrain, &c. in his own name, it seems prudent to make the appointment by a demise of the trustee and grantor.

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*to him paid by the said [*trustee*], *did* grant, bargain, sell, and demise, unto the said [*trustee*], his executors, administrators, and assigns, the said manor, rectory, messuages, lands, tenements, and hereditaments, with the appurtenance: *To hold* the same unto the said [*trustee*], his executors, administrators, and assigns, from the day next before the day of the date thereof, for the term of ninety-nine years, if the said [*grantor*] should so long live; *Upon* certain trusts therein declared for better securing unto the said [*grantee*], his executors, administrators, and assigns, the payment of the said annuity, or yearly rent-charge of [*annuity*] pounds, with such costs, charges, damages, and expenses as are therein mentioned: AND in the said indenture is contained a proviso, enabling the said [*grantor*] or his assigns, at any time during the said term, to repurchase the said annuity, or yearly rent-charge of [*annuity*] pounds, upon giving one month's notice in writing to the said [*grantee*], his executors, administrators, or assigns; and upon payment of all arrears of the said annuity, together with a proportional part thereof from the last quarterly day of payment, up to the day of

for 99 years, if grantor should so long live;

upon trust for better securing annuity and costs.

Recital of power to repurchase, on giving one month's notice.

A trustee of an attendant term assigned or noticed in the deed appointing a receiver, should join in the appointment.

So if the appointment of a receiver be in the annuity or mortgage deed, and an attendant term is assigned or noticed in the same deed, it seems, for the above reasons, equally necessary that the trustee of the attendant term should join in the appointment or demise, whichever form he adopted.

Where the estate is previously incumbered, and the person having the legal estate will not join in the demise, the receiver's appointment should be by power of attorney.

But if an annuity is charged, or a mortgage made on an estate which has been previously incumbered, and the person having the legal estate will not join in the demise to the receiver, where, from the nature of the property, it is desirable to have one, then he is sometimes appointed without a demise, *ut ante*, p. 300; and the prior charges are either recited in the deed, or stated by way of schedule, and the receiver directed to apply the rents in the first place in paying the prior charges, and in the next place in paying the annuity or mortgage. This may be done either by the annuity or mortgage deed, or by a separate deed, according to the circumstances. *Vide ante*, p. 299 (*k*).

Receiver of copyholds always appointed by power of attorney.

So a receiver of copyholds is always appointed by a deed in the nature of a power of attorney. See the form where a receiver is appointed both of freeholds and copyholds by that mode, *ante*, p. 300. And see the form where the receiver is appointed by a demise of the freeholds, and a power of attorney as to the copyholds, *post*, p. 432.

repurchasing the same; together with all costs, charges, *and expenses to be incurred by reason of the nonpayment thereof; and upon payment unto the said [*grantee*], his executors, administrators, or assigns, of the sum of [*original consideration money, and one quarter's annuity in advance from the day of repurchase*] pounds of lawful money of Great Britain. And whereas it was agreed between the said [*grantor*] and [*grantee*], that a receiver should be from time to time appointed, for collecting and receiving the rents and profits of the said manor, rectory, messuages, lands, tenements, and hereditaments, upon which the said annuity or yearly rent-charge is secured; and that the said [*receiver*] should be the first receiver appointed for that purpose. Now this indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of ten shillings of lawful money of Great Britain to the said [*grantor*] and [*trustee*], paid by the said [*receiver*], at or before the sealing and delivery of these presents, the receipt whereof is hereby respectively acknowledged (*e*); *They* (*f*) the said [*grantor*] and [*trustee*], at the request and upon the nomination of the said [*grantee*], testified by his being a party to,

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Recital of agreement to appoint receiver.

Testatum.

Appointment of receiver by demise.

(*e*) If the demise upon trusts for securing the annuity were made to the grantee himself, say,

ORIGINAL DEMISE MADE TO GRANTEE.

"*He* the said [*grantor*], (upon the nomination of the said [*grantee*],) and also the said [*grantee*], *have*, and each of them *hath* granted," &c. *ut supra*,

(*f*) If the trustee should object to demise by the word *grant*, but to which there appears not to be the least ground for any objection, *vide*, Vol. 1, p. 424, then say,

DEMISE WHERE TRUSTEE OBJECTS TO THE WORD "GRANT."

"*He* the said [*grantor*], (at the request and upon the nomination of the said [*grantee*], testified by his executing these presents,) *hath* granted, bargained, sold, and demised; *And* by these presents *doth* grant, bargain, sell, and demise; *And* the said [*trustee*], (at the like request and nomination,) *hath* bargained, sold, demised, and confirmed; *And* by these presents *doth* bargain, sell, demise, and confirm, unto the said [*receiver*], his," &c. *ut supra.*

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and sealing and delivering these presents, *have*, and each of them *hath* granted, bargained, sold, and demised; *And* by these presents *do* and each of them *doth* *grant, bargain, sell, and demise unto the said [*receiver*], his executors, administrators, and assigns (*g*), ALL THAT the manor or lordship, or reputed manor or lordship, of, &c. AND ALL THAT the rectory of the parish of, &c. with the glebe lands, tithes, and other appurtenances thereto belonging: AND ALL and every other the messuages, lands, tenements, and hereditaments of or to which the said [*grantor*], or any person or persons in trust for him, now is, or are seised or entitled, situate, lying, and being in the several parishes or places of, &c. being of a freehold, and not of a copyhold or leasehold tenure, now in the several occupations of the several persons, and at the several yearly rents mentioned and specified in the schedule hereunder written; together with their and every of their rights, members, and appurtenances whatsoever. AND the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits of the said manor and other hereditaments hereinbefore expressed to be hereby demised, and every part thereof. TO HAVE AND TO HOLD the said manor or lordship, reputed manor or lordship, rectory, messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore expressed to be hereby demised, with the appurtenances, unto the said [*receiver*], his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during, and unto

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Parcels.

Manor, rectory, glebe lands, tithes, &c.

And all other freehold messuages, &c. of grantor, situate in certain parishes, and described in schedule.

Reversion, &c.

Habendum to receiver,

for ninety-nine years, if grantor and receiver

Unless the parcels are extremely long, they should be inserted at length.

(*g*) When the appointment of a receiver is in a distinct instrument, the parcels must be enumerated as in the annuity or mortgage deed, or described by reference to a schedule, or rent roll, to be introduced by way of schedule. If the parcels are very long, and it bē desirable that a shorter description should be adopted, and if the circumstances of the case will warrant it, the parcels may be described as "All the manors, &c. now or late of the said [*grantor* or *mortgagor*], situate in the several parishes of ——." But in case the grantor has other lands in these parishes, it will be necessary to have an enumeration by particular description, or by reference to the names of the tenants. Pres. MSS.

the full end and term of ninety-nine years (*h*), if the said *[*grantor*] and [*receiver*] should both so long live; without impeachment of waste (so far as the said [*grantor*] can legally grant that exemption): UPON THE TRUSTS *nevertheless*, and for the intents and purposes hereinafter expressed and declared; that is to say; UPON TRUST, that he the said [*receiver*] shall and do permit and suffer the said [*grantor*], and his assigns, to hold and enjoy the said manor and other hereditaments; and to receive and take the rents, issues, and profits thereof, to and for his and their own use and benefit, until some quarterly payment of the said annuity, or yearly rentcharge of [*annuity*] pounds, or some part thereof, shall be in arrear and unpaid until the said [*grantee*], his executors, administrators, or assigns, by the space of forty

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should both so long live;

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upon trusts; *viz.*

to permit grantor to enjoy premises until annuity be in arrear forty days.

(*h*) If the annuity be granted for the life, or determinable with the life, of the grantee, the premises should be demised to the receiver, for

ANNUITY FOR THE LIFE OF GRANTEE;

" ninety-nine years, if the said [*grantee*] and [*receiver*] should both of them so long live; without," &c. *ut supra.*

So if it be for, or determinable with, the life of a nominee, the demise should be for

NOMINEE;

" ninety-nine years, if the said [*nominee*] and [*receiver*] should," &c. *ut supra.*

But if it be for, or determinable with, the lives of two or more nominees, the demise should be for

TWO OR MORE NOMINEES.

" ninety-nine years, if the said [*receiver*], and also either of them the said nominees should so long live; without," &c. *ut supra.*

If a receiver be appointed of a leasehold estate, originally granted for ninety-nine years, if a nominee or nominees should so long live, make the demise to the receiver for

RECEIVER OF LEASEHOLD.

" ninety-eight years, if the said hereinbefore in part recited indenture of lease should so long continue, and if the said [*grantor*] and [*receiver*] should both so long live: without," &c. *ut supra;*

in order to prevent the receiver's liability to the rents and covenants. *Vide ante*, p. 317; Vol. 1, pp. 337, 537; *ante*, pp. 52, 55, 316.

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days next after any of the days or times in and by the said recited indenture appointed for payment thereof. AND UPON FURTHER TRUST, that he the said [*receiver*] shall and do immediately after any *quarterly payment of the said annuity or yearly rent-charge of [*annuity*] pounds, or some part thereof, shall be in arrear and unpaid by the space of forty days next over or after any of the said days or times appointed for payment thereof as aforesaid, at the request of the said [*grantee*], his executors, administrators, or assigns, enter into and upon the manor, rectory, messuages, lands, tenements, and hereditaments hereinbefore demised, and receive and take the rents, issues, and profits thereof, and ask, demand, collect, and receive of and from all and every, or any, the owners or occupiers of land within the said parish of ——, all tithes, or compositions for tithes, which shall, from time to time, accrue or become payable to the said [*grantor*], or his assigns, during the continuance of the said annuity, or yearly rent-charge; and shall and do sell and dispose of the said tithes, which shall be received in kind, in such manner as to the said [*receiver*] shall seem meet: AND shall and do pay, apply, and dispose of the money to be received by all or any of the ways or means aforesaid, for the purposes and in manner following (that is to say); in the first place, the said [*receiver*] shall and may, by and out of the said rents, issues, and profits, retain and reimburse himself, all costs, charges, and expenses which he shall have paid, sustained, or incurred in or about the execution of all or any of the trusts or powers hereby reposed in him; together with a reasonable allowance (*i*) or

And upon trust that receiver shall, after annuity is in arrear forty days, at grantee's request, enter upon lands, and take the rents thereof,

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and collect tithes in kind, and receive compositions for tithes;

and sell tithes received in kind,

and apply the money as follows:

in the first place, receiver to retain expenses,

with a reasonable allowance

It is prudent specifically to fix the receiver's allowance,

and to authorize him to pay for repairs, &c.

A chancery receiver can only expend a small sum at his own discretion.

(*i*) A reasonable allowance seems too indefinite; probably disputes and trouble will be prevented by allowing the receiver to retain the usual sum of five pounds, or two pounds ten shillings per centum, according to the nature of the property (*vide ante*, p. 414), upon the gross rents which he shall actually receive, as a compensation for his time and trouble, *ut ante*, p. 302. And it seems prudent to authorize the receiver to pay the taxes, &c. and the expenses of repairs, as there mentioned. For without an express authority he cannot make those payments. The Court of Chancery will not permit a receiver appointed by the Court, to lay out more than a very small sum at his own discretion, *Waters* v. *Taylor*, 15 Ves. 26, without a previous application to the Court. *At-*

*compensation for his trouble, in or about the execution of the same trusts or powers; *And* after payment and retention thereof, the said [*receiver*] shall, in the next place, pay and satisfy the said [*grantee*], his executors, administrators, and assigns, the said annuity or yearly rent-charge of [*annuity*] pounds, as and when the same shall from time to time become due and payable, according to the true intent and meaning of the said recited indenture; together with all such costs, charges, and expenses as shall have been paid, sustained, or incurred by reason or in consequence of the non-payment thereof: *And* from and after the several payments and deductions aforesaid, the said [*receiver*] shall, from time to time, pay the clear residue or surplus of the money which shall have come to his hands for or in respect of the said rents, issues, tithes, and profits, unto the said [*grantor*], or his assigns, or to such other person or persons as he or they shall direct or appoint. AND *it is hereby declared*, by and between the said parties to these presents, that it shall and may be lawful to and for the said [*receiver*] from time to time, and at any time or times after one quarterly payment of the said annuity, or yearly rent charge of [*annuity*] pounds, or any part thereof, shall be in arrear by the space of forty days as aforesaid, and during the continuance of the same annuity, to take and use every lawful remedy by action, suit, distress (*k*), or otherwise, for collecting and

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for his trouble;

and in the next place to pay annuity,

together with all costs, &c.

and pay the residue to grantor.

Power to receiver to distrain, and collect tithes.

torney General v. *Vigor*, 11 Ves. 563. But where the Master reported that a previous expenditure was for the lasting benefit of the estate, and it was made by the direction of the trustees, an order for the allowance was made. *Blunt* v. *Clitherow*, 6 Ves. 799.

(*k*) Independently of this power, a mortgagee, and consequently a person having the legal estate upon trusts for securing an annuity, after giving notice of the mortgage or annuity deed to the tenant in possession under a lease prior to the mortgage or annuity, is entitled to the rent in arrear at the time of the notice, as well as to what accrues afterwards, and he may distrain for it after such notice. *Moss* v. *Gallimore*, 1 Dougl. 278; *vide ante*, pp. 273, 301. [*Vide* also *post*, Vol. 5, p. 386.] As to an action for mesne profits on an ejectment, *vide* Vol. 1, p. 566. As to a distress on tenants for a rent-charge, *vide* Vol. 1, pp. 603, 615. And as to giving up possession after the arrears of the annuity are satisfied, *vide ante*, p. 342†.

Notice of the deed should be given to the tenants in possession before a distress is made by a mortgagee, trustee, or receiver.

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recovering the rents, issues, and profits of the said manor, rectory, messuages, lands, tenements, and hereditaments expressed to be hereby demised, of and from the respec-

[*426] *tive tenants or occupiers thereof for the time being; or for the recovering or collecting of the said tithes, or compositions for tithes, or any of them, or any part thereof; and to employ such agents or workmen to assist therein, and to do or transact all acts, matters, and things in or about the premises, as fully and effectually, to all intents and purposes, as the said [*grantor*], or his assigns, or the said [*trustee*], his executors, administrators, or assigns, any or either of them, might or could have done if these presents, or the said recited indenture, had not been made, or executed: AND ALSO, that it shall be lawful for the said [*receiver*], from time to time, or at any time or times, after any quarterly payment of the said annuity, or yearly rent-charge, shall be so in arrear as aforesaid, and during the continuance of the same annuity, to remove (*l*) and put any tenant or tenants, occupier or occupiers of the said hereditaments and premises, or any part thereof, out of and from the possession of the same; and to let or demise the same hereditaments, or any part or parts thereof, to any person or persons, for any term or terms not exceeding seven years, in possession, upon such terms and conditions as the said [*receiver*] shall think fit (*m*). PROVIDED ALWAYS, *and it is hereby declared and*

Power to receiver to eject tenants and relet the premises.

Cesser of term upon repur-

An ejectment cannot be brought either by or against a Chancery receiver without leave of the Court; but it may by or against a receiver appointed by deed.

(*l*) Although a receiver appointed by the Court of Chancery cannot proceed in ejectment against the tenants of the estate, *Wynn* v. *Lord Newborough*, 3 Bro. C. C. 88, without application to the Master of the Court; 1 Ves. jun. 165, S. C.; yet a receiver, who has a term conferring on him the immediate reversion, may maintain an ejectment in his own name, or a receiver under a power of attorney may maintain an ejectment in the name of the person appointing him, if such person has the immediate legal estate in reversion. *Ante*, Vol. 1, p. 566. So an ejectment cannot be brought against the tenants in possession, where there is a receiver appointed by the Court of Chancery, without the leave of the Court, under the pain of being committed for a contempt; *Anonymous*, 6 Ves. 287. *Angel* v. *Smith*, 9 Ves. 340; but it is of course otherwise where a receiver is appointed by deed.

(*m*) For the satisfaction of persons paying money to the receiver, it seems prudent to declare that his receipts shall be sufficient discharges, &c. *ut ante*, p. 302.

agreed by and between the said parties to these presents, * that if the said [*grantor*] or his assigns, or any of them, should at any time during the continuance of this demise repurchase the said annuity, or yearly rent-charge of [*annuity*] pounds, pursuant to the power or proviso for that purpose contained in the indenture hereinbefore recited, *Then* and in such case, and upon payment by the said [*grantor*], or his assigns, unto the said [*receiver*], of a reasonable compensation or allowance for his trouble in the execution of the trusts and powers herein contained, the said term of ninety-nine years hereby created shall thenceforth determine and become absolutely void. AND THE SAID [*grantor*] doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*grantee*], his executors, administrators, and assigns, that if at any time during the continuance of the said annuity or yearly rent-charge of [*annuity*] pounds, the said [*receiver*], or any future receiver to be appointed, as hereinafter mentioned, should happen to die, or should refuse and neglect, or become in any manner incapable of collecting or receiving the rents and profits of the said premises, or to apply the same in manner aforesaid; or in case the said [*grantee*], his executors, administrators, or assigns should be desirous of removing the said [*receiver*], or any future receiver, from being such receiver as aforesaid, *Then*, and in any of the said cases, he the said [*grantor*] (*n*), or his assigns, shall and will join with the said [*trustee*], his executors, administrators, or assigns, in authorizing and empowering such other fit person in the place or stead of the said [*receiver*], or the receiver for the time being, as the said [*grantee*], his executors, administrators, or assigns, shall from time to time nominate or appoint, to collect, receive, and pay the said rents, issues, tithes, and profits, in manner and upon the trusts aforesaid: *And then*, and in any of the said cases, the said [*grantor*], or his assigns, shall and will from time to time grant, or join with the said

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chase of annuity.

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Covenant by grantor to join with the trustee in appointing such new receiver as grantee shall nominate;

(*n*) This and the succeeding clause are usually inserted to prevent the person appointing from being answerable for the receiver's deficiencies. *Vide ante*, p. 416.

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[*trustee*], his executors, administrators, or assigns, in granting the like term of ninety-nine years, of and in the said premises, to such person or persons as the said [*grantee*], his *executors, administrators, or assigns, shall nominate for that purpose; which term or terms of ninety-nine years, so to be granted, shall respectively be determinable upon the death of the same person or persons, so to be from time to time nominated as last aforesaid, and of the said [*grantor*], or either of them; and shall be upon such and the same trusts, and under and subject to such and the same provisions, declarations, and agreements, as are herein contained, concerning the said term of ninety-nine years hereby granted; and also with, under, and subject to such other provisions, declarations, covenants, and agreements, as the nature of the case may then require; and as by the said [*grantee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be thought requisite and proper to be inserted in such grant or demise: AND that if the said [*grantor*], or his assigns, or any of them, should refuse or neglect to join with the said [*trustee*], his executors, administrators, or assigns, in authorizing or appointing such future receiver or receivers as aforesaid; or to demise the said hereditaments in manner hereinbefore expressed for the space of three calendar months next after the decease, incapacity, misbehaviour, or removal of the said [*receiver*], or any other receiver, to be constituted as aforesaid, *Then* and in such case, and so often as the same shall happen, it shall be lawful for the said [*trustee*] (*o*), his executors, administrators, or assigns, at the request and by the direction of the said [*grantee*], his executors, administrators, or assigns, without the concurrence of the said [*grantor*], or his assigns, from time to time, to constitute some person to collect, receive, and pay the said rents, issues,

and that in case of grantor's neglect, trustee may alone, at the request of grantee, appoint new receiver.

ORIGINAL DEMISE MADE TO GRANTEE.

(*o*) If the demise upon trusts for securing the annuity were made to the grantee himself, say,

"for the said [*grantee*], his executors, administrators, or assigns, if he or they should think proper, without," &c. *ut supra.*

tithes, and profits; and also to make such grant and demise for a term of ninety-nine years, determinable upon the joint lives of the said [*grantor*], and of such person *or persons so to be appointed as last aforesaid, upon the trusts and in manner aforesaid; and every such nomination and appointment, grant and demise, as last aforesaid, shall be as valid and effectual, to all intents and purposes, as if the said [*grantor*], or his assigns, had joined therein, and executed the same. And the said [*receiver*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantor*], and his assigns; and also severally, with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*receiver*] shall and will, from time to time, and at all times hereafter, during such time as he shall be continued receiver and collector of the said rents, issues, tithes and profits in manner aforesaid, use his utmost endeavours to collect and receive the same rents, issues, tithes, and profits, pursuant to the trusts and directions aforesaid; and duly pay and apply the same, in manner hereinbefore directed. And the said [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*receiver*], his executors, administrators, and assigns, that he the said [*grantor*], or his assigns, or some or one of them, shall and will allow and pay, or cause to be allowed and paid unto the said [*receiver*], when, and so long as he shall receive the said rents, issues, tithes, and profits, in pursuance of the trusts and powers hereinbefore contained, a reasonable allowance for his expenses and trouble, in collecting and receiving the same, and for acting in the same trusts. And also (*p*), that he the said [*receiver*] shall not be answerable for any other monies, than such as he shall actually receive by virtue of or under these presents; or for any loss which may hap-

RECEIVER BY DEMISE ON GRANT OF ANNUITY.

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Covenant by receiver to collect and duly apply rents and tithes.

Covenant by grantor to pay receiver a reasonable allowance;

and that receiver shall not be answerable for involuntary losses.

(*p*) It is usual and proper to insert the above provision, although a receiver, whether appointed by the court or by deed, is not answerable for involuntary losses. *Knight* v. *Lord Plymouth*, 3 Atk. 480; 3 Ves. 566; 1 Dick. 120, *S. C.*; *Ex parte Belchier*, Ambl. 218; *Wren* v. *Kirton*, 11 Ves. 377. *Vide post*, p. 441, (*b*).

Receiver not answerable for involuntary losses.

RECEIVER BY DEMISE ON GRANT OF ANNUITY.

pen by the insolvency of any tenant or occupier of the said demised premises, or any part thereof; or for the insufficiency, or deficiency, of any beasts or cattle, goods

[*430] * or chattels, which shall be had or taken by way of distress for rent, or arrears of rent, due, or to grow due for or in respect of the said demised premises, or any of them; *So* that the same do not happen through his wilful neglect or default: nor for any banker, or other person with whom any of the monies which shall come to the hands of the said [*receiver*], by virtue of these presents, shall be deposited for safe custody. PROVIDED ALWAYS, and these presents are upon this express condition, that in case the said [*receiver*], by any disability, should be rendered incapable to collect the said rents and profits; or should neglect or refuse to act or proceed therein, or to apply the same according to the trusts aforesaid; or should otherwise misbehave himself, in relation to the trusts hereby in him reposed; or in case the said [*grantee*], his executors, administrators, or assigns, should be desirous of determining the said term of ninety-nine years, hereby granted; and if in any of the said cases, the said [*grantee*], his executors, administrators, or assigns, should tender, or cause to be tendered, unto the said [*receiver*], the sum of one shilling of lawful money of Great Britain, with the intent to frustrate, determine, and make void the said term and estate of ninety-nine years, hereby granted as aforesaid; and should within the space of six calendar months, thence next ensuing, by any deed or writing under the hand and seal, or hands and seals of the said [*grantee*], his executors, administrators, or assigns, signify unto the said [*receiver*], such his or their intention, *Then*, and in such case, the said term and estate, hereby granted as aforesaid to the said [*receiver*] of and in the said hereditaments and premises, and every part thereof; and all the powers and authorities hereby given to, or vested in the said [*receiver*], shall thenceforth cease, determine, and be void to all intents and purposes whatsoever. AND *it is hereby agreed and declared* by and between the said [*grantor*] and [*grantee*], that he the said [*grantee*], his executors, administrators, or assigns, shall not bear or sustain, or be charged or charge-

Power to grantee to remove receiver, and determine his estate.

Agreement that grantee shall not be answerable for receiver.

able with, or accountable for any loss which may happen of the rents, issues, and profits of the said premises, or any of them, by reason or means of any neglect or default, or breach of trust of the said *[*receiver*], or any future collector or receiver of the same (*q*). PROVIDED ALWAYS, *and it is hereby declared and agreed*, that these presents, or any thing herein contained, shall not prevent or be construed to restrain the said [*grantee*], his executors, administrators, or assigns, from suing for, recovering, or compelling payment of the said annuity, or yearly rent-charge of [*annuity*] pounds, or any part thereof; or from using or exercising all or any of the powers or remedies by the said recited indenture given, limited, or reserved to him or them for enforcing such payment, or for obtaining possession of the said hereditaments and premises so charged therewith as aforesaid, or any part thereof: *And also* (*r*) shall not prevent, or be construed to restrain the said [*trustee*], his executors, administrators, or assigns, from executing or exercising all or any of the trusts, powers, or authorities, by the said recited indenture reposed, given, limited, or reserved to him or them. IN WITNESS, &c.

RECEIVER BY DEMISE ON GRANT OF ANNUITY.

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Appointment of receiver not to prevent grantee from exercising any of his remedies;

nor trustee from executing the trusts.

THE SCHEDULE to which the above written indenture refers.

(*q*) *Vide post*, p. 444 (*e*).

(*r*) If the original demise, upon trusts for securing the annuity, were made to the grantee himself, this part must of course be omitted.

ORIGINAL DEMISE MADE TO GRANTEE.

RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

*APPOINTMENT *of a* RECEIVER *by two Mortgagors and the Mortgagee* (*a*), *either of* FREEHOLD *Premises alone, or both of* FREEHOLD AND COPYHOLD; *the Freehold by* DEMISE, *the Copyhold by* POWER OF ATTORNEY; *with Variations adapted to a Mortgage, made* UNDER A POWER *in a Settlement.*

THIS INDENTURE, made the —— day of ——, in the —— year, *George* the Fourth, &c. and in the year of our Lord, 18—; BETWEEN [*mortgagor*], of, &c. the [*other mortgagor*], of, &c. of the first part; [*mortgagee*], of, &c. of the second part; and [*receiver*], of &c. of the third part. WHEREAS by indenture of lease, and indenture of appointment and release, the lease bearing date the day before, and the appointment and release even date with these presents, and respectively made between the said [*mortgagor*] and [*other mortgagor*], of the one part, and the said [*mortgagee*], of the other part; in consideration of the sum of [*mortgage money*] pounds, to the said [*mortgagor*], and [*other mortgagor*], paid by the said [*mortgagee*], *All that, &c. describe the parcels, omitting the general words, and clause of the reversion* (*b*), with their appurtenances, were appointed and released, by the said [*mortgagor*], and [*other mortgagor*], and now stand limited, *To the use* of the said [*mortgagee*], his heirs, and assigns, for ever: *Subject*, nevertheless, to a proviso or agreement, contained in the said indenture of appointment and release, for redemption of the same premises, on payment by the said [*mortgagor*], and [*other mortgagor*], or either of them, their, or either of their heirs,

Parties.

Recital of mortgage by lease, and appointment, and release from two to one.

[(*a*) See clause in a mortgage-deed, appointing a receiver, *post*, Vol. 5, p. 519.]

(*b*) *Vide ante*, p. 422 (*g*).

*executors, administrators, or assigns, unto the said [*mortgagee*], his executors, administrators, or assigns, of the sum of [*mortgage money*] pounds, with interest for the same in the mean time, after the rate of five pounds per centum per annum, by equal half-yearly payments, on the —— day of ——, and the —— day of ——, now next ensuing. (*c*) And whereas it hath been agreed, between the said [*mortgagor*], and [*other mortgagor*], and the said [*mortgagee*], that for securing the regular half-yearly payment of the interest of the said sum of [*mortgage money*] pounds, so long as the same principal sum shall remain upon the security of the said manors, and other the hereditaments comprised in the said recited indenture of lease, and appointment and release: a *receiver [*434]

RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

Recital of agreement for appointing receiver.

(*c*) If there be copyhold premises, add,

FREEHOLD AND COPYHOLD.

Recital of covenant by two, to surrender copyholds in fee to mortgagee.

"And by the said indenture of appointment and release, the said [*mortgagor*] and [*other mortgagor*], *did*, for the consideration aforesaid, for themselves jointly and severally, and for their respective heirs, executors, and administrators, covenant and agree with the said [*mortgagee*], his heirs, executors, administrators or assigns, that they the said [*mortgagor*], and [*other mortgagor*], respectively and their respective heirs and assigns, and all other persons claiming any estate, right, title, trust, or interest in or to the premises, and whose concurrence should be requisite, would at the next court, to be holden for the manor of ——, in the county of ——, or as soon thereafter as conveniently might be, at their own costs and charges, surrender into the hands of the lord or lords, lady or ladies, of the said manor, according to the custom of the said manor, *All those*, &c. with their rights, members, privileges, and appurtenances; *And* all other the lands, tenements, and hereditaments whatsoever of them the said [*mortgagor*], and [*other mortgagor*], holden of the said manor by copy of court roll, *To the use* of the said [*mortgagee*], his heirs and assigns, *Upon condition* that the said surrender should be void, on payment of the said principal money and interest on the days and in manner hereinbefore mentioned for payment thereof."

RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

should be from time to time appointed, for collecting and receiving the rents and profits of the said mortgaged premises; *and* that the said [*receiver*] should be the first receiver appointed for that purpose. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of five shillings of lawful money of Great Britain, to the said [*mortgagors*], and [*mortgagee*], paid by the said [*receiver*], at or before the sealing and delivery of these presents, the receipt whereof is hereby respectively acknowledged; *they* the said [*mortgagor*], and [*other mortgagor*], upon the nomination of the said [*mortgagee*] and also the said [*mortgagee*] (*d*), *have*, and every of them *hath* (*e*) granted, bargained, sold, and demised; *And* by these presents do, and every of them doth grant, bargain, sell, and demise unto the said [*receiver*], THE SAID (*f*) manor, and other hereditaments, hereinbefore described, and comprised in, and appointed and released by the said recited indenture of appointment and release, with their and every of their rights, royalties, members, and appurtenances: AND the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits, of the said manor, and other hereditaments, hereinbefore expressed to be hereby demised, and every part thereof; TO HAVE AND TO HOLD the said manor and other hereditaments, with the appurtenances, unto the *said [*receiver*], from

Testatum.

Demise by two mortgagors and mortgagee, to receiver.

Parcels by reference to recital.

Reversion, &c.

Habendum to receiver for ninety nine years, if he should so long live.

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(*d*) The mortgagee is made a party to the demise, because he has the legal estate. *Vide ante*, p. 300 (*l*).

Grant by mortgagee.

(*e*) There appears to be no objection to the word *grant* being used by the mortgagee; but if he should prefer its omission, *vide ante*, p. 421, (*f*).

FREEHOLD AND COPYHOLD.

(*f*) If there be also copyholds, say,

Freehold parcels by reference to recital.

"THE SAID manor or lordship, or reputed manor or lordship, and all and singular the said freehold messuage or tenements, lands, hereditaments, and premises, mentioned and described in the said indenture of appointment and release, bearing even date herewith, and thereby appointed and released, unto the use of the said [*mortgagee*], his heirs and assigns, as aforesaid, with their and every of their rights, royalties, members, and appurtenances: AND the reversion," &c. *ut supra.*

the day next before the day of the date hereof, for and during, and unto the full end and term of ninety-nine years (*g*), if the said [*receiver*] should so long live, without impeachment of waste: UPON TRUST *nevertheless*, that the said [*receiver*] shall and do permit and suffer (*h*) the said [*mortgagor*], and [*other mortgagor*], respectively, and their respective heirs and assigns, to hold and enjoy the said manor and hereditaments, and to receive and take the rents, issues, and profits thereof, until one half year's interest of the said sum of [*mortgage money*] pounds, or some part thereof, shall be in arrear and unpaid unto the said [*mortgagee*] his executors, administrators, or assigns, by the space of (twenty-eight) (*i*) days next after either of the following days; that is to say, the —— day of ——, and the —— day of —— in any year or years. AND UPON FURTHER TRUST, that he the said [*receiver*] shall and do, from and immediately after one half year's interest of the said sum of [*mortgage money*] pounds, or some part thereof, shall be in arrear and unpaid, by the space of (twenty-eight) days next over or after either of the said days hereinbefore appointed for payment thereof as aforesaid, enter into and upon, and from time to time thenceforth during so many years of the said term, determinable as aforesaid, as the said principal sum, or any part thereof, shall remain at interest on the aforesaid security, receive and take the yearly rents, issues, and profits of the said manors and other hereditaments expressed to be hereby demised and dispose of the same in manner hereafter mentioned (*k*). AND *it is hereby agreed and declared* between and by the

RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

upon trust to permit mortgagors to receive rents until half a year's interest be in arrear twenty-eight days.

After half a year's interest shall be in arrear twenty-eight days, receiver to enter, and for remainder of term receive rents.

(*g*) If the premises be leasehold, *vide ante*, p. 422.

LEASEHOLD.

(*h*) If the mortgage be made under a power in a settlement, say,

MORTGAGE UNDER A POWER.

"the person or persons, for the time being entitled to redeem the premises, to hold," &c. *ut supra*.

(*i*) The time most usually fixed is, either forty days or six weeks; but twenty-eight days seems a more reasonable time, and it is occasionally the period limited. *Vide post*, p. 458.

The time before which the receiver is to act.

(*k*) If there be also copyholds, add,

FREEHOLD AND COPYHOLD.

"AND THIS INDENTURE FURTHER WITNESSETH, and in

RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

*said parties hereto, that the said [*receiver*] shall, from time to time, by, and out of the said rents, issues, and profits, to be received as aforesaid, pay unto the said [*mortgagee*], his executors, administrators, and assigns, the interest which shall be due upon the said sum of [*mortgage money*] pounds, at the time of the said [*receiver's*] entering into the receipt of the said rents and profits; and also the interest thenceforth to become due upon or in respect of the said sum of [*mortgage money*] pounds, at or upon the days or times hereinbefore appointed for payment thereof, as aforesaid: *And* after payment thereof, shall and do pay unto (*l*) the said [*mortgagor*], and [*other mortgagor*], respectively, their respective heirs (*m*), executors, administrators, and as-

Receiver, out of rents, to pay interest due, and to become due.

And pay residue to mortgagors,

Power of attorney to receiver to collect rents, &c. of copyholds.

further pursuance of the said recited agreement, *They* the said [*mortgagors*], and [*mortgagee*], *have*, and each and every of them *hath*, authorized, directed, and appointed; *And* by these presents *do*, and each and every of them *doth* authorize, direct, and appoint the said [*receiver*], from time to time, in case one half year's interest of the said principal sum of [*mortgage money*] pounds, or of any part thereof, should be in arrear and unpaid as aforesaid, to collect and receive all and every the rents and profits, as well annual as casual, of, or arising from or out of the said copyhold or customary lands, tenements, hereditaments, and premises mentioned and described in the said indenture of appointment and release, bearing even date herewith, and thereby covenanted to be surrendered as aforesaid, of and from the respective tenants or occupiers thereof, as the same shall become due and payable; and upon payment or receipt thereof, to make and give acquittances or discharges for the same. And *it is hereby agreed*," &c. *ut supra.*

MORTGAGE UNDER A POWER.

(*l*) If the mortgage be made under a power in a settlement, say,

"The person or persons for the time being entitled to receive the same, or to such person or persons as he or they shall direct, the clear residue," &c. *ut supra.*

(*m*) Rents payable in mortgagor's life belong to his executor, but those afterwards, to his heir. *Ante*, p. 302, (*m*).

*signs, or to such person or persons as they shall respectively direct, the clear residue of the said rents and profits, which shall from time to time remain, after such payments as aforesaid, after deducting and retaining out of such residue for the use of him the said [*receiver*], all such sums of money as he the said [*receiver*] shall reasonably (*n*) deserve, as a compensation for his trouble and expenses, in receiving and paying the said rents and profits, in manner aforesaid; and as he shall be put unto, or sustain, in or about the execution of the trusts hereby in him reposed. And *it is hereby agreed and declared* between and by the said [*mortgagor*], and [*other mortgagor*] and the said [*mortgagee*], that it shall and may be lawful for the said [*receiver*], from time to time, and at all times, after one half year's interest of the said sum of [*mortgage money*] pounds, or any part thereof, shall be in arrear as aforesaid; and during such time as the said principal sum, or any part thereof, shall thenceforth remain upon the security aforesaid, to take and use every lawful remedy, by action, suit, distress (*o*), or otherwise, for collecting and recovering the rents, issues, and profits (*p*), of the said manor and other hereditaments expressed to be hereby demised, of and from the respective tenants or occupiers thereof; and to do and execute all other matters and things needful and requisite for collecting and receiving the same. And also, that it shall be lawful for the said [*receiver*], from time to time, and at all times, after the said half year's interest shall be in arrear as aforesaid, during the said term of ninety-nine

RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

after retaining a reasonable compensation for acting as receiver, and for his expenses.

Power to receiver to recover rents by action, distress, &c.

Power to receiver to eject tenants, and, with mortgagee's consent, to lease premises.

(*n*) It seems prudent specifically to fix the receiver's allowance. *Vide ante*, p. 424 (*i*).

(*o*) In relation to the copyholds, this power is absolutely requisite because the receiver has no estate in the copyhold lands. *Vide ante*, pp. 301, 418, 420.

(*p*) If there be also copyhold premises, say,

FREEHOLD AND COPYHOLD.

"as well of the said freehold hereditaments and premises hereby demised as of the said copyhold hereditaments and premises by the said indenture, bearing even date herewith, covenanted to be surrendered as aforesaid, of and from," &c. *ut supra*.

RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

years, *determinable as aforesaid; and whilst the said principal sum of [*mortgage money*] pounds, or any part thereof, shall remain upon the security aforesaid, to remove and put any tenant or occupier of the said mortgaged premises, or any part thereof, out of and from the same (*q*): and to let or demise the same premises, or any part or parts thereof, unto such person or persons, for any term not exceeding seven (*or* fourteen *or* twenty-one) years in possession; and upon and under such terms and conditions, and in such manner and form, as the said [*receiver*], with the consent of the said [*mortgagee*], his executors, administrators, or assigns, shall think proper (*r*). (*s*) PROVIDED ALWAYS, that if the said (*t*) [*mortgagor*] and [*other mortgagor*], or either of them, their or either of their heirs, executors, administrators, or assigns, should at any time before the expiration of the said term of ninety-nine years, determinable as aforesaid, well and truly pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, the said principal sum of [*mortgage money*] pounds with all interest then due for the same; and should well and truly pay or cause to be paid unto the said [*receiver*], a reasonable allowance for his trouble and care in and about the trusts aforesaid; *Then*, and immediately after

Cesser of term, on payment of mortgage money and receiver's allowance.

(*q*) *Vide ante*, p. 426 (*l*).

(*r*) If there be also copyhold premises, add,

FREEHOLD AND COPYHOLD.

Leases of copyholds to be made with lord's license.

"*But so, nevertheless,* that every such lease or demise of the said copyhold premises, or any part thereof, be made either with the license and consent of the lord for the time being of the said manor of ——, according to the custom of the said manor, or without incurring a forfeiture of the same copyhold premises, or any part thereof. PROVIDED ALWAYS, that," &c. *ut supra.*

(*s*) For the satisfaction of persons paying money to the receiver, it seems prudent to declare that his receipts shall be sufficient discharges, &c. *ut ante*, p. 302.

(*t*) If the mortgage be made under a power in a settlement, add,

MORTGAGE UNDER A POWER.

"the person or persons for the time being entitled to redeem the premises, should," &c. *ut supra.*

such payment, the said term of ninety-nine years, hereby *created (*u*), shall thenceforth cease, determine and be void. AND THE SAID [*mortgagor*] and [*other mortgagor*] do hereby, for themselves jointly and severally, and for their respective heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*mortgagee*], his heirs, executors, administrators and assigns, that if the said [*receiver*], should die, during such time as the said principal sum of [*mortgage money*] pounds, or any part thereof, or any interest thereupon shall remain due and unpaid; or if the said [*receiver*] should be removed from or become in any manner incapable of collecting and receiving the rents and profits of the said premises, or should neglect or refuse to act and proceed therein, or apply the same in manner aforesaid, during such time as the said sum of [*mortgage money*] pounds, or any part thereof shall remain due and owing, or should otherwise misbehave himself in the trusts aforesaid, *Then*, and in any of the said cases, they the said [*mortgagor*] and [*other mortgagor*] (*x*) respectively or their respective heirs or assigns, shall and will join with the said [*mortgagee*], his heirs, executors, administrators, or assigns, in removing the said [*receiver*], if living, from his said employment, or in constituting such other fit person in the place or stead of the said [*receiver*] as the said [*mortgagee*], his executors, administrators or assigns, shall from time to time nominate or appoint, to collect, receive, and pay the said rents and profits, in the manner and upon the trusts aforesaid: *And then* and in any of the said cases the said [*mortgagor*] and [*other mortgagor*] (*x*) respectively, and their respective heirs and assigns, shall and will grant, or join in the said [*mortgagee*], his heirs or assigns, in granting the like term of ninety-nine years of and in the

RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

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Covenant by two mortgagors, in case of receiver's death, &c. to join with mortgagee in appointing such new receiver as he shall nominate;

and to demise premises to new receiver;

(*u*) If there be also copyhold premises, add,

FREEHOLD AND COPYHOLD.

"and also the power and authority hereby given to the said [*receiver*], shall," &c. *ut supra.*

(*x*) If the mortgage be made under a power in a settlement, say,

MORTGAGE UNDER A POWER.

"or the person or persons for the time being entitled to redeem the premises, shall and will," &c. *ut supra.*

RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

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said (*y*) *premises to such person or persons as the said [*mortgagee*], his executors, administrators, or assigns, shall nominate for that purpose; which term of ninety-nine years shall be determinable upon the death of the person or persons so to be nominated as last aforesaid; and shall be upon such trusts, and under such and the same provisoes, declarations, covenants, and agreements, as are herein contained concerning the said term of ninety-nine years hereby granted; and also under such other provisoes, declarations, covenants, and agreements, as the nature of the case may then require: and as shall, by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, be thought requisite and proper, to be inserted in such grant or demise; *And* so from time to time, when and as often as the same shall happen, until the said principal sum of [*mortgage money*] pounds, and all interest thereupon, shall be fully paid and satisfied. And if the said [*mortgagor*] and [*other mortgagor*] (*z*) respectively, or their respective heirs or assigns, or any of them, should refuse or neglect so to do, for the space of three calendar months next after the decease, incapacity, or misbehaviour of the said [*receiver*], or any other receiver to be constituted as aforesaid, *Then*, and in such case, and so often as the same shall happen, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, if he or they should think proper, without the consent or concurrence of the said [*mortgagor*] and [*other mortgagor*] (*z*), or either of them, their or either of their heirs or assigns, to constitute some person to collect, receive, and pay the said rents and profits; and also to make such grant and demise for a term of ninety-nine years, determinable upon the life or lives of the grantee or grantees, upon the trusts and in

and so from time to time.

If mortgagors neglect to appoint new receiver, mortgagee, without their concurrence, to appoint receiver and make demise to him.

FREEHOLD AND COPYHOLD.

(*y*) If there be also copyhold premises, say, "freehold premises," &c. *ut supra.*

MORTGAGE UNDER A POWER.

(*z*) If the mortgage be made under a power in a settlement, say, "or either of them, or the person or persons for the time being entitled to redeem the said hereditaments and premises, or any of them," &c. *ut supra.*

manner aforesaid. AND THE SAID [*receiver*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*mortgagor*], and [*other mortgagor*] respectively, and *their respective heirs and assigns, and also with and to the said [*mortgagee*], his executors, adminstrators, and assigns, that he the said [*receiver*] shall and will, from time to time, and at all times hereafter during such time as he shall be continued receiver and collector of the said rents and profits in manner aforesaid, use his utmost endeavours to collect and receive the same rents and profits, pursuant to the trusts and directions aforesaid; AND THE SAID [*mortgagor*] and [*other mortgagor*], for themselves jointly and severally, and for their respective heirs, executors, and administrators, do hereby covenant, promise, and agree, with and to the said [*receiver*], his executors, administrators, and assigns, that they the said, [*mortgagor*] and [*other mortgagor*], their heirs and assigns (*a*), or some or one of them, shall and will allow, and pay, or cause to be allowed and paid unto the said [*receiver*], when and so long as he shall receive the said rents and profits, a reasonable allowance for his expenses and trouble in collecting and receiving the same, and for acting in the trusts hereinbefore declared; *and* that it shall be lawful for the said [*receiver*] to retain and take such allowance for his own use accordingly AND ALSO (*b*) that the said [*receiver*] shall not

RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

Covenant by receiver, with martgagors and mortgagee, to collect and duly apply rents.

[*441]

Covenant by mortgagors to pay, and permit receiver to retain, a reasonable allowance;

and that receiver shall not

(*a*) If the mortgage be made under a power in a settlement, add, "or other the person or persons for the time being entitled to redeem the said hereditaments and premises, or some," &c. *ut supra.*

MORTGAGE UNDER A POWER.

(*b*) Independently of this clause, the receiver is not answerable for involuntary losses. *Vide ante*, p. 429 (*p*). But such a clause is always inserted, in order to relieve the receiver's mind from any anxiety on that ground. Sometimes the indemnity is extended by the original deed to future receivers, as in the following form. Although this mode is not common, yet it is found useful in case the mortgagor neglects to join in a future appointment, or his heir is disabled from joining by infancy, &c. for it is easier to procure a receiver where there is a clause of indemnity, than where there is not such a clause.

Receiver's indemnity clause always inserted.

Advantages of extending it to future receivers.

" PROVIDED ALWAYS, *and it is hereby declared and agreed,* Indemnity clause to pre-

RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

be answerable for involuntary losses.

be *answerable for any other monies than such as he shall actually receive by virtue of or under these presents; or for any loss which may happen by the insolvency of any tenant or occupier of the said demised premises, or any part thereof, or for the insufficiency or deficiency of any beasts or cattle, goods or chattels, which shall be had or taken by way of distress for rent, or arrears of rent, due or to grow due, for or in respect of the said (*c*) demised premises, or any of them; so that the same do not happen

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sent and future receivers.

that the said [*receiver*], his heirs, executors, administrators, and assigns, and also the person who from time to time shall be appointed the receiver by virtue of the covenant (*or* provision) hereinbefore contained, his heirs, executors, administrators, and assigns, shall severally and respectively be charged and chargeable only for such monies as they respectively shall actually receive by virtue of the trusts, powers, or confidence hereby in them reposed. *And* that any one or more of them shall not be answerable or accountable for the other or others of them, or for the acts, receipts, neglects, or defaults of the other or others of them; *But* each and every of them only and respectively for his and their own acts, receipts, neglects, or defaults respectively: *And* that they, or any of them, shall not be answerable or accountable for any banker, goldsmith, broker, or other person, with whom, or in whose hands, any of the said trust monies shall or may be deposited or lodged for safe custody or otherwise, in the execution of the trusts hereinbefore contained. *And* that they, any, or either of them shall not be answerable or accountable for any misfortune, loss, or damage which may happen in the execution of the aforesaid trusts, or in relation thereto, except the same should happen by or through his or their wilful default respectively. *And* then and in that case, each person respectively shall singly and alone be answerable for such loss or damage as shall arise from his or their own default."

FREEHOLD AND COPYHOLD.

(*c*) If there be also copyhold premises, say,

"freehold and copyhold premises or any of them, or any part thereof; so that," &c. *ut supra.*

through his wilful neglect or default; nor for any banker, or other person with * whom any of the monies which shall come to the hands of the said [*receiver*], shall be deposited for safe custody. PROVIDED ALWAYS, *and these presents are* UPON THIS EXPRESS CONDITION, that in case at any time while the said sum of [*mortgage money*] pounds, or any part thereof, shall remain at interest upon the said security, the said [*receiver*], by any disability, should be rendered incapable to collect the said rents and profits, or should refuse or neglect to act or proceed therein, or to apply the same according to the trusts aforesaid; or shall otherwise misbehave himself in relation to the trusts hereby in him reposed; or in case the said [*mortgagee*], his executors, administrators, or assigns, should be desirous of determining the said term of ninety-nine years, and if in any of the said cases the said [*mortgagee*], his executors, administrators, or assigns, should tender, or cause to be tendered, unto the said [*receiver*], the sum of one shilling, of lawful money of Great Britain, with the intent to frustrate, determine, and make void the said term and estate of ninety-nine years, hereby granted as aforesaid, and should within the space of six calendar months then next ensuing, by any deed or writing under his hand and seal, attested by two or more credible witnesses, signify unto the said [*receiver*], such his or their intention, *Then* and in such case the said term and estate hereby granted as aforesaid to the said [*receiver*], of and in the said (*d*) premises, and every part thereof, shall thenceforth cease, determine, and be void, to all intents and purposes whatsoever. AND *it is hereby agreed and declared* between and by the said [*mortgagor*] and [*other mortgagor*], and the said [*mortgagee*], that he the said [*mortgagee*], his heirs, executors, administrators, or assigns, shall not bear or sustain, or be charged or chargeable with, or accountable for, any loss which may

RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

[*443]

Power to mortgagee to remove receiver, and determine his estate.

Agreement that mortgagee shall not be answerable for receiver.

(*d*) If there be also copyhold premises, say, FREEHOLD AND COPYHOLD.

"freehold premises, and every part thereof, and also the power and authority hereby given to the said [*receiver*], shall," &c. *ut supra.*

RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

[*444]

Appointment of receiver not to prevent mortgagee from compelling payment of mortgage money, or from foreclosing.

happen of the rents and profits of the said mortgaged premises, or any of them, by reason or means of any neglect, default, or breach of trust of the said *[*receiver*], or any future collector or receiver of the same (*e*). PROVIDED ALWAYS, that these presents, or anything herein contained, shall not prevent, or be construed to restrain the said [*mortgagee*], his heirs, executors, administrators, or assigns, from suing for, recovering, or compelling payment of the said sum of [*mortgage money*] pounds, or any part thereof, or from obtaining the possession of the said mortgaged premises, or foreclosing the equity of redemption thereof, in case default should be made in payment of the said sum of [*mortgage money*] pounds, or any part thereof, at the time appointed for payment thereof by the said recited indenture of appointment and release. IN WITNESS, &c.

Receiver's deficiencies, and his salary, to be wholly borne by mortgagors.

(*e*) From the whole tenor of the deed, the following addition may be unnecessary; yet such an express declaration seems prudent.

"*But* that all such loss, misapplication, or non-application, and every receiver's salary, shall be wholly borne and sustained by the said [*mortgagors*], their heirs, executors, or administrators."

RECEIVER OF RENTS, TITHES, &C. TO PAY INTEREST ON MORTGAGE OF OTHER PROPERTY.

*APPOINTMENT *of a* RECEIVER *of Rents, Tithes, &c. by a* DEMISE *of a Rectory* (*a*), *Glebe Lands, Tithes, &c.* Upon trust, *to commence receiving immediately; and after paying Curate's salary, and Rector's Outgoings, to pay Interest to become due on a Mortgage of other Property.*

THIS INDENTURE, made the —— day of ——, in the —— year, *George the Fourth*, &c. and in the year of our Lord 18— ; BETWEEN [*mortgagor*], of, &c. clerk, of the first part; [*mortgagee*], of, &c. of the second part; and [*receiver*], of, &c. of the third part; (*Recite a mortgage of other lands from mortgagor to mortgagee, with trusts for sale.*) AND WHEREAS the said [*mortgagor*] is the rector of the rectory, or parish church of —— aforesaid: AND upon the treaty for the loan of the said sum of [*mortgage money*] pounds, and previously to the advancing the same, it was agreed between the said parties hereto, that for more effectually securing the regular payment half yearly of the interest of the said sum of —— thousand pounds, whilst the same or any part thereof should remain upon the security of the said mortgaged premises, a receiver should from time to time be employed for the purpose of collecting and receiving the tithes, rents, issues, and profits of the said rectory, and of the messuages or tenements and glebe lands thereto belonging; and that the said [*receiver*] should be the receiver for that purpose immediately employed. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the premises, and of

Parties.

Recital of mortgage of other lands;

that mortgagor is rector; and agreement that a receiver should be appointed of tithes, &c.

Testatum.

[(*a*) The Editor understands that the Court of King's Bench, in a case which is not yet in print, has decided *against* the right of a clergyman to charge his living. A statement of this case, if it can be obtained in time, will be given in an appendix to the present volume.]

RECEIVER OF RENTS, TITHES, &c. TO PAY INTEREST ON MORTGAGE OF OTHER PROPERTY.

*the sum of five shillings of lawful money of Great Britain, to the said [*mortgagor*] paid by the said [*receiver*], at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *He* the said [*mortgagor*], with the consent and approbation of the said [*mortgagee*], (testified by his sealing and delivering these presents), *Hath* granted, bargained, sold, and demised (*b*), *and by* these presents *doth* grant, bargain, sell, and demise unto the said [*receiver*], ALL THAT she said rectory, &c. (*ut ante*, pp. 263-4.) TO HAVE AND TO HOLD the said rectory, messuages or tenements, glebe lands, tithes, tenths, and emoluments, and all and singular other the premises hereby granted, bargained, sold, and demised, or intended so to be, with their and every of their appurtenances, unto the said [*receiver*], from the day next before the day of the date of these presents, for and during and unto the full end and term of ninety-nine years thence next ensuing, and fully to be complete and ended, if they the said [*mortgagor*] and [*receiver*] should both so long live (*c*); UPON and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same (*d*); that is to say, UPON TRUST, that he the said [*receiver*] shall and do from time to time, whilst the said sum of —— thousand pounds, or any part thereof, or the interest thereof, shall remain upon the security of the said mortgaged premises, receive

Demise of rectory to receiver.

Habendum for ninety-nine years, if the person should so long live,

upon trust,

whilst mortgage continues, to receive tithes, rents, &c.

Receiver of tithes appointed by demise, may recover them in his own name by suit in equity;

or of small tithes not exceeding ten pounds;

or Quakers' great or small tithes, not exceeding fifty pounds, before two justices of the peace.

(*b*) As to the advantage of a demise, *vide ante*, pp. 300 (*l*), 419, 426. In this case a demise is attended with a further advantage, for it enables the receiver in his own name, as lessee, to recover the tithes due, by a suit in equity. See Archbishop of *York* v. *Stapleton*, 3 Atk. 136. Ellis on Tithes, 24. Or if the value of the small tithes due from any person do not exceed *ten* pounds, the receiver may, in his own name, as lessee, recover them before two justices of the peace, by virtue of the 7 & 8 Will. 3, c. 6, and the 53 Geo. 3, c. 127, s. 4. Or as to Quakers' tithes, whether great or small, if not exceeding *fifty* pounds, the receiver may, in his own name, as lessee, recover them before two justices of the peace, by virtue of the 7 & 8 Will. 3, c. 34; and 53 Geo. 3, c. 127.

Habendum.

(*c*) As to the *habendum* in a demise by a clergyman, *vide ante*, Vol. 1, p. 75 (*d*).

Reddendum.

(*d*) A nominal *reddendum* seems unnecessary; *vide ante*, p. 265.

*and take the tithes, rents, issues, emoluments, and profits of the said rectory and premises, when and as the same respectively shall become due, or ought to be paid: *And* shall and do from time to time sell and dispose of such of the said tithes, emoluments, and annual profits, to be received as aforesaid, as shall be paid in kind: *And* shall and do, by, with, and out of the said tithes, rents, emoluments, and profits, and of the monies to arise by such sale or sales as aforesaid, pay to the curate for the time being of the said rectory of ——, the salary or stipend allowed and payable to him by the said [*mortgagor*], for performing the duties or office of a curate, at such time or times as such salary or stipend hath hitherto been paid, or agreed to be paid: *And also* shall and do pay all other outgoings and payments which shall from time to time become due and ought to be paid by the said [*mortgagor*], in his character and capacity of rector, or incumbent of the parish church of —— aforesaid, for or in respect of the said rectory or parsonage: *And* shall and do in the next place, by, with, and out of the said tithes, rents, emoluments, and profits, and the monies to arise by such sale or sales as aforesaid, pay, or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, all interest which shall from time to time become due and payable upon or in respect of the said sum of —— thousand pounds, so secured to him or them as aforesaid; such interest to be paid half-yearly, on the —— day of ——, and the —— day of ——, by equal portions, in every year; the first half-yearly payment thereof to be made on the —— day of ——, now next ensuing: And from and after the said several payments shall be so made as aforesaid, and also from and after payment to the said [*receiver*] of the reasonable (*e*) and necessary costs, charges, and expenses which he the said [*receiver*] shall be at, and be allowed for his trouble in the execution of the trusts hereby created, shall and do account for and answer and pay to the said [*mortgagor*] all the surplus which shall remain of

RECEIVER OF RENTS, TITHES, &C. TO PAY INTEREST ON MORTGAGE OF OTHER PROPERTY.

and sell tithes, received in kind;

and thereout pay curate's salary;

rector's outgoings,

and interest on mortgage money;

and after deducting expenses of receivership, pay the residue to mortgagor.

(*e*) It seems prudent specifically to fix the receiver's allowance. *Vide ante*, p. 424 (*i*).

RECEIVER OF RENTS, TITHES, &c. TO PAY INTEREST ON MORTGAGE OF OTHER PROPERTY.

the said tithes, rents, *emoluments, and profits, and of the monies to arise from such sale or sales as aforesaid, after the several payments and deductions hereinbefore mentioned and hereby directed to be made as aforesaid. PROVIDED ALWAYS, that if the said [*mortgagor*] should

Cesser of term.

(*add proviso for cesser of term on payment of mortgage money, &c.* ut ante, p. 438.)

Power to receiver to recover tithes, rents, &c. by action, distress, &c.

AND *it is hereby agreed and declared* between and by the said parties hereto, that it shall and may be lawful for the said [*receiver*], from time to time, and at all times hereafter, whilst the said sum of [*mortgage money*] pounds, or any part thereof, shall remain upon the security of the said mortgaged premises, to use and take all and every or any lawful ways and means, remedy or remedies, by suit, action, distress, or otherwise, for receiving, collecting, and recovering the said tithes, rents, emoluments, and profits, of and from the respective persons liable to pay the same; and to do and execute all other matters and things needful and requisite for collecting and receiving the same: and

On sale of tithes received in kind, receiver's receipt for purchase monies to be a good discharge.

upon sale of such of the said tithes, emoluments, and annual profits as shall be paid or received in kind (*f*) as aforesaid, the receipt or receipts, of the said [*receiver*], for the monies to arise from or by such sale or sales, shall be a good and sufficient release and discharge to the person or persons who shall pay the same, for so much thereof as in such receipt or receipts shall be expressed or acknowledged to be received.

Covenant by mortgagor, on determination of present term, to grant a similar term to such new receiver as mortgagee shall nominate.

AND THE SAID [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*mortgagee*], his executors, administrators, and assigns, that if the said term of ninety-nine years should be determined, either by the death of the said [*receiver*], or in his life-time by the said [*mortgagee*], his executors, administrators, or assigns as hereinafter mentioned; or if the said [*receiver*] should be removed from, or by any means rendered incapable of collecting and receiving the tithes, rents, emoluments, and profits aforesaid, during such time

(*f*) For the satisfaction of persons paying the tithes, &c. to the receiver, and to prevent trouble, it seems prudent to extend this clause to all payments. *Ut ante*, pp. 281, 302.

as the said sum of [*mortgage money*] pounds, or any part thereof, or the *interest thereof, shall remain upon the security of the said mortgaged premises; *Then* and in any of the said cases, he the said [*mortgagor*] and his assigns, shall and will forthwith thereafter grant and demise the like term of ninety-nine years of and in the said premises, to such person or persons as he the said [*mortgagee*], his executors, administrators, or assigns, shall for that purpose nominate and appoint; which said term shall be determinable on the death of such person or persons, or of the said [*mortgagor*], which shall first happen; and shall be upon the same trusts, and by, with, and under the same powers, provisoes, declarations, covenants, and agreements, as are hereinbefore declared, touching and concerning the said term of ninety-nine years hereby granted and demised, and by and under such other provisoes, declarations, covenants, and agreements, as the nature of the case may then require, and as shall by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel, be thought requisite and proper to be inserted in such grant and demise: *To the intent* that the interest of the said sum of [*mortgage money*] pounds, or so much thereof as shall from time to time remain unsatisfied, shall be punctually paid to the said [*mortgagee*], his executors, administrators, or assigns, by and out of the said tithes, rents, emoluments, and profits of the said premises. AND THE SAID [*receiver*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*mortgagor*], his heirs, executors, administrators, and assigns, and also generally with and to the said [*mortgagee*], his executors, administrators, and assigns, (*to collect the same* "tithes, rents, emoluments, and profits," *ut ante*, p. 441.) AND THE SAID [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*receiver*], his executors and administrators, that he the said [*mortgagor*] shall, &c. (*pay, and permit receiver to retain a reasonable allowance*, ut ante, p. 441.) AND ALSO that the said [*receiver*] shall not be answerable for (*involuntary losses*, ut ante, p. 441.) PROVIDED ALWAYS,

RECEIVER OF TITHES, RENTS, &C. TO PAY INTEREST ON MORTGAGE OF OTHER PROPERTY.

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Covenant by receiver to collect and duly apply tithes, rents, &c.

Covenant by mortgagor to pay, and permit receiver to retain, a reasonable allowance for his trouble;

and that receiver shall not be answerable for involuntary losses.

RECEIVER OF RENTS, TITHES &c. TO PAY INTEREST ON MORTGAGE OF OTHER PROPERTY.

(*add power to mortgagee to remove receiver, and determine his estate; and agreement that mortgagor shall not be *answerable for receiver*, ut ante, p. 443; *saying*, "the tithes, rents, emoluments, and profits of the said premises, or any of them.") AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*mortgagee*], his executors, administrators, and assigns, that he the said [*grantor*] is, at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seised of, or well and sufficiently entitled to the said rectory, glebe lands, messuages or tenements, tithes, tenths, emoluments, and premises, with the appurtenances, for and during his life, without any manner of condition, power of revocation, or any other restraint, matter, or thing whatsoever, to alter, change, charge, defeat, lessen, or incumber the same. AND now hath in himself good right, full power, and lawful authority to grant and demise the said rectory and premises unto the said [*receiver*], for the term of ninety-nine years, determinable as aforesaid; upon the trusts, and in the manner hereinbefore mentioned. AND FURTHER, that in case the said [*mortgagor*] should at any time or times hereafter, whilst the said sum of [*mortgage money*] pounds, or any part thereof, or the interest thereof, shall remain unpaid and owing to the said [*mortgagee*], his executors, administrators, or assigns, receive, or be preferred or promoted to any other ecclesiastical benefice or benefices in lieu of or in exchange for the said rectory hereby granted and demised, or intended so to be; *Then*, and in such case, he the said [*mortgagor*] shall and will, within six calendar months next after such event shall happen, well and effectually grant and demise, or cause to be granted and demised, unto the said [*receiver*], or the receiver or collector for the time being, to be appointed in his stead, as hereinbefore is mentioned, the same benefice or benefices to which he shall be so preferred or promoted, or which he shall so receive in exchange as aforesaid, for a term of ninety-nine years, determinable as hereinbefore mentioned; which said term shall be upon, under, and subject to the same trusts, provisoes, declarations, covenants, and agree-

Power to mortgagee to remove receiver.

[*450]

Indemnity to mortgagee.

Covenant by mortgagor for title;

power to demise;

and on taking another benefice, to make a like demise thereof;

ments as are hereinbefore expressed, declared, and contained, of and concerning the said term of ninety-nine years hereby granted and demised as aforesaid; and such *other trusts, declarations, covenants, and agreements, as the nature of the case may then require: *And* so from time to time, as often as he the said [*mortgagor*] shall receive, or be promoted or preferred to any ecclesiastical benefice or benefices as aforesaid; *To the intent* that the interest of the said sum of [*mortgage money*] pounds, or so much thereof as shall or may remain unsatisfied, shall be punctually paid to the said [*mortgagee*], his executors, administrators, and assigns, by, with, and out of the tithes, rents, emoluments, and profits, of the said benefice or benefices, which he the said [*mortgagor*] shall so from time to time receive, or be preferred or promoted to as aforesaid. AND LASTLY, that he the said [*mortgagor*], and all and every person and persons claiming or to claim by, from, through, under, or in trust for him, shall and will, from time to time, and at all times hereafter, during his life, upon every reasonable request of the said [*mortgagee*], his executors, administrators, or assigns, but at the costs and charges of the said [*mortgagor*], make, do, perform, and execute, or cause to be made, done, performed, and executed, all and every such further and other lawful and reasonable act and acts, deed and deeds, conveyances, and assurances in the law whatsoever for the further, better, and more effectually conveying, demising, and assuring, as well the said rectory and premises hereby granted and demised, or intended so to be as aforesaid, as the said other ecclesiastical benefice or benefices to which he the said [*mortgagor*] shall be preferred or promoted, or which he shall receive in exchange as aforesaid, unto the said [*receiver*], or the collector or receiver for the time being to be appointed in his stead, as hereinbefore is mentioned, for the said term of ninety-nine years, or the then residue thereof, determinable as aforesaid, to and for the trusts, intents, and purposes hereinbefore expressed and declared of and concerning the same: *As* by the said [*mortgagor*], his executors, administrators, or assigns, or his or their counsel in the law, shall be lawfully or reasonably advised or devised and required. IN WITNESS, &c.

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for further assurance of benefice demised and future benefices.

RECEIVER BY MORTGAGOR, BY POWER OF ATTORNEY.

*APPOINTMENT *of a* RECEIVER *by a Mortgagor, by way of* POWER OF ATTORNEY (*a*), *with Power to the Receiver to appoint a* DEPUTY.

THIS INDENTURE, made the —— day of —— in the —— year, *George the Fourth*, &c. and in the year of our Lord, 18—; BETWEEN [*mortgagor*], of, &c. of the first part; [*mortgagees*], of, &c. of the second part; and [*receiver*], of, &c. of the third part. WHEREAS by indentures of lease and release, bearing date respectively the day before, and even date with these presents, and made or expressed to be made between the said [*mortgagor*], of the one part, and the said [*mortgagees*], of the other part; *The* capital and other messuages, tenements, lands, and hereditaments set forth, described, or mentioned in the schedule to these presents (*b*), were in consideration of the sum of [*mortgage money*] pounds, paid by the said [*mortgagees*] to the said [*mortgagor*] duly conveyed and assured by the said [*mortgagor*] unto and to the use of the said [*mortgagors*], their heirs and assigns for ever: *But nevertheless subject* to a proviso for the redemption of the said hereditaments and premises, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*mortgagees*], or the survivors or [*453] *survivor of them, his executors, administrators, or assigns, of the sum of [*mortgage money*] pounds, and interest

Parties.

Recital of mortgage in fee, from one to three or more trustees, or partners in trade

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An appointment by demise, when it can be adopted, seems preferable to an appointment by power of atney.

(*a*) As an appointment of a receiver, by way of power of attorney, is used by some gentlemen, a form is therefore inserted. But that mode being liable to the objection stated *ante*, 300 (*l*), it seems likely that it will, gradually, be generally disused, whenever the form by way of demise can, from the circumstances of the case, be effectually adopted. *Vide ante*, p. 420.

Parcels in schedule.

(*b*) As to a description by a schedule where the parcels are long, *vide ante*, p. 422.

RECEIVER BY MORTGAGOR, BY POWER OF ATTORNEY.

for the same, after the rate of five pounds for one hundred pounds for a year, on or at the days or times and in manner therein mentioned. AND WHEREAS upon the treaty for the loan of the said sum of [*mortgage money*] pounds, it was stipulated and agreed that for securing the punctual and regular payment of the interest of the said sum of [*mortgage money*] pounds, a receiver should from time to time be constituted and appointed for collecting and recovering the rents and profits of the said capital and other messuages, &c. *And* that the said [*receiver*] should be the first receiver. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, *He* the said [*mortgagor*] (*c*), (with the consent and approbation of the [*mortgagees*], testified by their severally executing these presents,) *hath* made ordained, constituted, and appointed, *And* by these presents *doth* make, ordain, constitute, and appoint the said [*receiver*], his receiver, agent, and attorney, from time to time in the name of him the said [*mortgagor*], to ask, demand, collect, and receive ALL and every the rents and profits of *All* and singular the said capital and other messuages, tenements, lands, and hereditaments, comprised in the said indentures of lease and release hereinbefore recited and set forth, and recited in the said schedule to these presents, of and from all and every or any of the present and future tenants and occupiers thereof respectively; or of the person or persons liable, or who shall be liable, to pay the same, as and when the said rents and profits shall from time to time become due and payable: AND in case of non-payment thereof, or of any part thereof, to take and use all such lawful remedies for recovering and obtaining the payment of the said rents and profits, or any of them, or any part thereof, by action, suit, distress (*d*), or otherwise, as shall be thought necessary: AND FURTHER, to do, perform, and execute all other acts, matters,

Recital of agreement to appoint receiver.

Testatum.

Appointment of receiver by mortgagor, with consent of mortgagees,

to collect rents of parcels mentioned in schedule.

In case of non-payment, to recover same by action, distress, &c.

and to do all other requisite acts for collect-

(*c*) It seems prudent for the mortgagees to join in the appointment, *ut ante*, p. 454, (*mutatis mutandis*,) for the reasons, *ante*, p. 300 (*l*), 418 (*d*).

MORTGAGEES ALSO APPOINT.

(*d*) *Vide ante*, p. 425 (*k*).

RECEIVER BY MORTGAGOR, BY POWER OF ATTORNEY.

ing the rents as fully as mortgagor could do; with power to appoint attornies.

*and things needful and requisite for collecting and receiving the said rents and profits, as fully and effectually to all intents and purposes whatsoever, as the said [*mortgagor*] could or might himself do: AND one or more attorney (*e*) or attornies under him, for all or any of the purposes aforesaid, to make, nominate, and appoint, and at will and pleasure to revoke such nominations, substitutions, and appointments respectively; and notwithstanding the same, to exercise all or any of the powers hereby given to him. AND the said [*mortgagor*] doth hereby

Direction to tenants to pay rents to receiver, or to his substitute.

order and direct all and every the tenants and occupiers of the said capital and other messuages, tenements, lands, and hereditaments, to pay unto the said [*receiver*], or to his substitute or substitutes, all and every the rents and profits thereof: *And* doth hereby declare that the receipt and receipts of the said [*receiver*], or of his substitute or substitutes, shall be good and sufficient discharges to such tenants and occupiers respectively, for such rents and profits as they respectively shall pay to him or them.

Either of their receipts to be sufficient discharges.

Rents received by substitute to be paid to receiver,

AND *it is hereby agreed and declared*, that all the rents and profits of the said hereditaments and premises, which shall be received by such substitute or substitutes of the said [*receiver*] as aforesaid, shall be paid by him or them to the said [*receiver*]; *And* that he the said [*receiver*] shall stand and be possessed of the same, UPON and for the trusts, intents, and purposes hereinafter mentioned; that is to say, UPON TRUST, that the said [*receiver*] shall and do, from time to time, out of the rents and profits of the said capital and *other messuages which shall be re-

upon the general trusts of receivership, out of rents and profits, to pay interest on mortgage money.

[*455]

It seems prudent not to authorize a receiver to appoint a deputy.

(*e*) The power to appoint a deputy is not usually inserted, a personal confidence being reposed in the receiver; and as he is allowed a salary for his trouble, it is generally expected that he will act himself. If there be no such power, and the receiver acts by deputy, the rule *delegatus non potest delegare* will be in full force, and he will be answerable for his deputy's deficiencies. But empowering him to appoint a deputy seems liable to abuse, as the receiver would not be answerable for the deputy's deficiencies, unless he was insolvent at the time of his appointment. *Vide ante*, p. 416. On the part of a mortgagor or grantor of an annuity, the power to appoint a deputy should be objected to, unless under very extraordinary circumstances.

ceived by him, under or by virtue of these presents, pay, or cause to be paid, to the said [*mortgagees*], or the survivors or survivor of them, his executors, administrators, or assigns, all the interest which shall from time to time become due or payable for or in respect of the said sum of [*mortgage money*] pounds, or any part thereof, on or at the days or times, and in the manner, in the said in part recited indenture of release mentioned and appointed for payment of the same: AND after payment thereof, do and shall in the next place deduct and retain, out of the said rents and profits, for his own use, a reasonable compensation and satisfaction for his care, pains, trouble, and expenses in collecting, receiving, and paying the said rents and profits, in manner and for the purposes aforesaid, not exceeding one shilling in the pound upon the amount of the sum to be received by him from time to time: AND do and shall pay, or cause to be paid, all the clear residue and surplus of the said rents and profits of the said hereditaments and premises, which shall from time to time remain in his hands, after answering the purposes aforesaid, unto the said [*mortgagor*], his heirs, executors, administrators, or assigns, or to such person or persons as he or they shall direct. AND THE SAID [*receiver*] doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said [*mortgagor*], his executors, administrators, and assigns; and also to and with the said [*mortgagees*], their heirs, executors, and administrators, in manner following; that is to say, that he the said [*receiver*] shall and will, from time to time, so long as he shall continue and be the collector and receiver of the rents and profits of the said capital and other messuages, tenements, lands, and hereditaments, use his utmost endeavours faithfully to collect and receive the same: AND that he the said [*receiver*] shall and will, during such time and so long as he shall continue and be collector and receiver as aforesaid, truly and punctually pay, or cause to be paid, in manner and for the purposes aforesaid, all such sum and sums of money as shall from time to time be collected and received by him, by virtue of and under these presents. AND THE SAID [*mortgagor*] doth hereby

RECEIVER BY MORTGAGOR, BY POWER OF ATTORNEY.

Retain for himself a compensation not exceeding 5*l.* per cent. on the sum to be received;

and pay residue to mortgagor.

Covenant by receiver to collect and duly apply rents.

Covenant by

RECEIVER BY MORTGAGOR, BY POWER OF ATTORNEY.

for himself, his heirs, *executors, and administrators, covenant, promise, and agree to and with the said [*mortgagees*], their heirs, executors, administrators, and assigns, in manner following; that is to say, that he the said [*mortgagor*], shall not, nor will, without the consent in writing of the said [*mortgagees*], or the survivors or survivor of them, his executors, administrators, or assigns, first had and obtained, revoke (*f*) the powers or authorities hereby given to the said [*receiver*], or to be given to any such future receiver, as hereinafter is mentioned, or any of them; or do or suffer, or cause to be done or suffered, any act, deed, matter or thing, whereby the said powers or authorities, or any of them, shall or may become void and of no effect; nor hinder or obstruct the said [*receiver*], or any future receiver, to be appointed as hereinafter is mentioned, in recovering, collecting, or receiving all or any of the rents and profits of the hereditaments and premises aforesaid, upon and for the trusts and purposes aforesaid, during such time as the said sum of [*mortgage money*] pounds, or any part thereof, shall remain and continue on the said recited security. AND FURTHER, that in case the said [*receiver*] should by death, or other disability, be disqualified or rendered incapable to collect and receive the rents and profits of the said capital and other messuages, tenements, lands, and hereditaments, or should refuse or neglect to proceed therein in manner aforesaid, or should otherwise misbehave himself in the trusts hereby in him reposed, during the continuance of the said sum of [*mortgage money*] pounds, or any part thereof, upon the security aforesaid, *Then*, and in any of the said cases, he the said [*mortgagor*], his heirs or assigns, shall and will join with the said [*mortgagees*], or the survivors or survivor of them, his heirs, executors, administrators, or assigns, in removing the said [*receiver*], if then living, from the said employment: *And* shall and will, in any of the cases aforesaid, duly constitute, appoint, and authorize such other person or persons in the place and stead of the said [*receiver*], as they the said [*mortgagees*], or the survivors or survivor of them, his heirs, executors,

mortgagor not to revoke appointment, without mortgagee's consent; or obstruct receiver in collecting rents.

In case of receiver's death, incapacity, &c. mortgagor to join with mortgagees in appointing such new receiver as they shall nominate;

(*f*) *Vide ante*, p. 303 (*n*).

administrators, or assigns, shall from time to time nomi- *nate, direct, or appoint, to collect, receive, and pay the rents and profits of the capital and other messuages, tenements, lands, and hereditaments, upon and for the trusts and purposes hereinbefore mentioned: *And* so from time to time, when and so often as the like case shall happen, until the said sum of [*mortgage money*] pounds, and all interest in respect thereof, shall be fully satisfied and paid. AND that in case the said [*mortgagor*], his heirs or assigns, should refuse or neglect so to do for the space of one calendar month next after the death, incapacity, or misbehaviour of the said [*receiver*], or any other receiver, so to be constituted and appointed as aforesaid, *Then*, and in that case, and so from time to time, as often as the same shall happen, it shall and may be lawful to and for the said [*mortgagees*], or the survivors or survivor of them, his executors, administrators, or assigns, if he or they should think fit, without the concurrence or consent of the said [*mortgagor*], his heirs or assigns, to constitute and appoint some fit person to collect, receive, and pay the said rents and profits, upon the trusts and purposes aforesaid, with such reasonable salary for his care, pains, trouble, and expenses, as the said [*mortgagees*], or the survivors or survivor of them, his executors, administrators, or assigns, shall think fit, not exceeding one shilling in the pound, upon the amount of the sums to be from time to time received as aforesaid. PROVIDED ALWAYS, *and it is hereby declared and agreed*, that the said [*receiver*], and every future collector or receiver, so to be appointed as aforesaid, shall be, and be considered the agent of the said [*mortgagor*] (*g*): *And* that the said [*mortgagees*], or any or

RECEIVER BY MORTGAGOR, BY POWER OF ATTORNEY.

[*457]

and so from time to time.

In case of mortgagor's neglect, mortgagees alone to appoint new receiver.

Receiver to be the agent of mortgagor;

and mortgagees not to be

(*g*) Some gentlemen add

"for every purpose, other than and except the purpose of applying a competent part of the rents and profits of the said hereditaments, in satisfaction of the said annuity (*or* the interest to become due on the said principal sum of —— pounds)."

The clause that the receiver shall be the agent of the mortgagor seems

The clause that the receiver

RECEIVER BY MORTGAGOR BY POWER OF ATTORNEY.

answerable for any loss occasioned by receiver.

*either of them, their or any of their heirs, executors, administrators, or assigns, shall not in any case be charged with, or answerable for, any loss or misapplication of the rents and profits of the said capital and other messuages, tenements, lands, and hereditaments, or any part thereof, by reason of any default, neglect, or breach of trust of the said [*receiver*], or any future collector or receiver, so to be appointed as aforesaid; *But* that such loss, misapplication, or non-application, and every receiver's salary, shall be wholly borne and paid by the said [*mortgagor*], his heirs, or assigns. PROVIDED ALSO, that the said [*receiver*], or such other receiver or receivers as aforesaid, shall not act under, or exercise the powers or authorities herein contained, or any of them, until some half yearly payment of the interest to become due, for or in respect of the said sum of [*mortgage money*] pounds, shall be in arrear and unpaid by the space of three calendar months (*h*) next after the same ought to be paid, by virtue of the said indenture of release bearing even date with these presents, any thing herein contained to the contrary notwithstanding. IN WITNESS, &c.

Receiver not to act till half a year's interest be in arrear three months.

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shall be the agent of the mortgagor seems not to be important.

to have great importance attached to it by some gentlemen. For it is said, it should be distinctly stated that the receiver, though appointed by the mortgagee, annuitant, &c. after default of the mortgagor or grantor to concur in the appointment, should be the agent of the mortgagor, &c. Pres. MSS. But that clause is not commonly inserted, the usual indemnity clause being generally thought quite sufficient.

(*h*) *Vide ante*, p. 435 (*i*).

*APPOINTMENT *of a* RECEIVER *of Rents and Profits of Lands and of Tithes, by a* POWER OF ATTORNEY, *for securing the Payment of Interest due on a* MORTGAGE, *and an* ANNUITY *charged on the same Lands and Tithes.*

RECEIVER OF RENTS AND TITHES TO PAY INTEREST AND ANNUITY.

THIS INDENTURE, made the —— day of ——, in the —— year, *George the Fourth*, &c. and in the year of our Lord 18—: BETWEEN [*mortgagor*], of, &c. of the first part; [*mortgagee*], of, &c. of the second part [*grantee*], of, &c. of the third part; and [*receiver*], of, &c. of the fourth part. WHEREAS *(recite a demise from mortgagor to mortgagee of a messuage, tithes, &c. mentioned in a schedule hereto, for one thousand years, to secure mortgage money and interest.)* AND WHEREAS *(recite a grant of an annuity, bearing even date herewith, from mortgagor to grantee, to be issuing out of the same messuage, tithes, &c.)* AND WHEREAS, for the punctual and regular payment of the interest of the said sum of [*mortgage money*] pounds, and of the said annuity or yearly rent-charge, or sum of [*annuity*] pounds, respectively, it hath been agreed, that the said [*receiver*] should be appointed receiver of the rents and profits of the said messuage or tenement, lands, woods, tithes, and hereditaments mentioned in the said schedule hereunto annexed, or hereunder written. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, *He* the said [*mortgagor*] (*a*), (with the privity of the said [*mortgagee*]

Parties.

Recital of a mortgage of a messuage, &c. for 1000 years.

Recital of a grant of an annuity charged on same messuages, &c.

Recital of agreement to appoint receiver of rents of lands and tithes mentioned in schedule, to secure interest on mortgage and annuity.

Testatum.

Appointment by grantor (with the pri-

(*a*) It seems advisable, in such a case as the above, to make the appointment by a joint demise of the mortgagor, mortgagee, and grantee, to the receiver for his life, *ut ante*, p. 434. Or if it be done by a power of attorney, for all of them to join in the appointment, *ut ante*, p. 301, *mutatis mutandis*. Whichever mode be adopted, the special covenants, &c. in the above form, will suggest the necessary alterations.

A joint demise, or joint power of attorney, seems preferable to the above.

RECEIVER OF RENTS AND TITHES TO PAY INTEREST AND ANNUITY.

vity of mortgagee and grantee) of receiver attorney, to collect rents and tithes mentioned in schedule.

*and [*grantee*], testified by their severally sealing and delivering these presents,) *hath* nominated, constituted, and appointed, *And* by these presents *doth* nominate, constitute, and appoint the said [*receiver*] to be receiver, agent, and attorney, from time to time, in the name of the said [*mortgagor*], to ask, demand, collect, and receive, ALL and every the rents and profits of the said messuage or tenement, lands, woods, and hereditaments, and the tithes mentioned in the schedule hereunto annexed or hereunder written, of and from the present and future tenants and occupiers thereof, and the person and persons liable to pay the same respectively, as and when the same shall from time to time become due and payable: AND in case of the non-payment thereof or non-delivery thereof, to take and use such lawful remedies for recovering and obtaining payment and delivery of the said rents, profits, and tithes, or any part thereof, by action, suit, distress, or otherwise, as shall be thought necessary: AND FURTHER to do, perform, and execute all other matters and things needful and requisite for collecting and receiving the said rents, profits, and tithes, as fully and effectually, to all intents and purposes, as he the said [*mortgagor*] could or might do. AND the said [*mortgagor*] doth hereby order and direct all and every the tenants and occupiers of all the said premises respectively, and the persons liable to pay the said tithes, to pay unto the said [*receiver*] all and singular the rents and profits of the said premises, and the said tithes, for the purposes hereinafter mentioned: AND doth hereby declare, that the receipts of the said [*receiver*] shall be good and sufficient discharges to such tenants or occupiers and persons, for such rents, profits, and tithes, as they shall respectively pay or deliver to him. AND *it is hereby agreed and declared*, between and by the parties to these presents, that all and every the rents, profits, and tithes, which shall be so received by the said [*receiver*], shall be held by him, UPON and for the trusts, intents, and purposes hereinafter mentioned; that is to say; UPON TRUST, that he the said [*receiver*] shall and do dispose of so much and such part of the said tithes as shall be received or taken in kind, for the best price or prices that can be reasonably obtained for the same: AND shall and do, with

And on non-payment, to recover same by action, distress, &c.

and to do all other requisite acts.

Directions to tenants and occupiers to pay tithes and rents to receiver.

Receiver's receipts to be sufficient discharges.

Declaration that receiver shall hold same,

upon trust, to sell tithes received in kind;

and out of all the monies

*and outof the monies to arise by the sale of such tithes as aforesaid, and with and out of all other monies which shall be received by the said [*receiver*], by virtue of these presents, in the first place, from time to time, pay all taxes, rates, assessments, and impositions whatsoever, now or hereafter to be taxed, charged, assessed, or imposed upon or in respect of the said premises, and which the respective tenants or occupiers thereof shall not be liable to pay: AND in the next place, pay to the said [*mortgagee*], his executors, administrators, and assigns, by two equal half-yearly payments, on the —— day of ——, and the —— day of ——, in every year, the interest for the said sum of [*mortgage money*] pounds: AND in the next place, pay to the said [*grantee*], his executors, administrators, and assigns, the said annuity, yearly rentcharge, or sum of [*annuity*] pounds, on the days or times when the same is made payable by the said recited indenture, bearing even date with these presents, as hereinbefore is mentioned: AND in the next place, deduct and retain, for his own use, so much and such sums of money, not exceeding after the rate of five pounds for every one hundred pounds received, as he shall reasonably deserve, as a compensation and satisfaction for his care, pains, trouble, and expenses in receiving and paying the said rents, profits, and tithes, in manner and for the purpose aforesaid: AND shall and do pay the clear residue and surplus of the said rents, profits, and tithes, which shall remain, after answering the several purposes aforesaid, unto the said [*mortgagor*], his (*b*) executors, administrators, or assigns. AND THE SAID [*receiver*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*mortgagor*], his (*b*) executors, administrators, and assigns; and also with and to the said [*mortgagee*], his executors, administrators,

RECEIVER OF RENTS AND TITHES TO PAY INTEREST AND ANNUITY.

which shall be received by him,

to pay taxes, &c.;

to pay interest on mortgage half yearly;

to pay annuity;

to retain expenses of receivership, not exceeding 5*l.* per cent.;

and pay residue to mortgagor.

Covenant by receiver, with mortgagor, mortgagee, and grantee, to collect rents and tithes.

(*b*) As this power of attorney would be revoked by the death of the mortgagor, *ante*, p. 303 (*n*), it seems that no surplus of the rents, &c. can by possibility become payable from the receiver to the mortgagor's heirs. *Vide ante*, p. 302 (*m*). But if the appointment be made by a joint demise, or joint appointment, of the mortgagor, mortgagee, and grantee, the word *heirs* should be added in both places.

The reason why the word *heirs* is omitted.

RECEIVER OF RENTS AND TITHES TO PAY INTEREST AND ANNUITY.

and assigns; *and also with and to the said [*grantee*] his executors, administrators, and assigns, in manner following (that is to say); that he the said [*receiver*] shall and will from time to time, so long as he shall be and continue to be the collector or receiver of the rents, profits, and tithes of the premises mentioned in the said schedule, or any of them, in manner aforesaid, use his utmost endeavours faithfully to collect and receive the same: AND shall and will, during such time and so long as he shall continue the collector or receiver of the rents, profits, and tithes, as aforesaid, truly and punctually pay, or cause to be paid, in manner, and to and for the ends, intents, and purposes aforesaid, all such monies, as shall from time to time be collected or received by him the said [*receiver*], by virtue of, or under the aforesaid powers or authorities. AND THE SAID [*mortgagor*] doth for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*mortgagee*], his executors, administrators, and assigns, and also with and to the said [*grantee*], his executors, administrators, and assigns, in manner following (that is to say); that he the said [*grantor*], shall not, nor will, without the consent of the said [*mortgagee*] and [*grantee*], their executors, administrators, or assigns, first had and obtained in writing, signed with their hands, revoke the powers (*c*) or authorities hereby given to the said [*receiver*], or any of them; or do, or suffer to be done, any act, matter, or thing, whereby the said powers or authorities hereby given, or any of them, may or shall become void and of no effect; or hinder or obstruct him the said [*receiver*], or any future receiver, to be appointed as hereinafter is mentioned, in recovering, collecting, or receiving all or any of the said rents, profits, and tithes of the said premises, upon and for the trusts, intents, and purposes aforesaid, during such time as the said sum of [*mortgage money*] pounds, or any part thereof, shall remain on the security of the hereditaments and premises mentioned in the said schedule hereunder written or hereunto annexed; or during such time as the same hereditaments and premises shall remain charged and chargeable with the payment of the

and duly apply same.

Covenant by mortgagor, with mortgagee and grantee, not without their consent, to revoke powers given to receiver, or obstruct him in executing his office:

(*c*) *Vide ante*, p. 303, (*n*).

*said annuity, yearly rent-charge, or sum of [*annuity*] pounds, or any part thereof. AND FURTHER, that in case the said [*receiver*] should, or by any disability be disqualified or rendered incapable to collect or receive the said rents, profits, and tithes, or should refuse or neglect to proceed therein in manner aforesaid, or should otherwise misbehave in the trusts hereby in him reposed, whilst the said sum of [*mortgage money*] pounds, and the said annuity, yearly rent-charge, or sum of [*annuity*] pounds, or either of them, or any part thereof respectively, shall remain and continue, or be payable on the aforesaid securities, *Then*, and in any of the said cases, except the death of the said [*receiver*], he the said [*mortgagor*], his heirs or assigns, shall and will join with the said [*mortgagee*] and [*grantee*], their executors, administrators, and assigns, in removing the said [*receiver*] from the said employment; *And* shall and will, in any of the said cases, duly constitute, appoint, and authorize such other fit person or persons in the place or stead of the said [*receiver*], as they the said [*mortgagee*] and [*grantee*], their executors, administrators, or assigns, shall from time to time nominate or appoint to collect, receive and pay the said rents, profits, and tithes of the said premises, upon and for the trusts, intents, and purposes hereinbefore mentioned: *And* so from time to time, when and so often as the like case shall happen, until the said sum of [*mortgage money*] pounds, and all interest for the same, shall be paid to the said [*mortgagee*] his executors, administrators, or assigns, and the said hereditaments and premises shall be released, or otherwise discharged from the payment of the said annuity, yearly rent-charge, or sum of [*annuity*] pounds. AND that in case the said [*mortgagor*], his heirs or assigns, should refuse or neglect so to do, for the space of three calendar months next after the death, incapability, or misbehaviour of him the said [*receiver*], or any other receiver so to be constituted and appointed as aforesaid, *Then*, and in such case, and so from time to time, as often as the like case shall happen, it shall and may be lawful to and for the said [*mortgagee*] and [*grantee*], their executors, administrators, or assigns, if they should think fit, without the consent or concurence of the said [*mortgagor*],

RECEIVER OF RENTS AND TITHES TO PAY INTEREST AND ANNUITY.

and in case of receiver's incapacity, &c. to join in removing him;

and then appoint such new receiver as mortgagee and grantee shall nominate;

and so from time to time.

And that in case of mortgagor's neglect, mortgagee and grantee may appoint new receiver.

RECEIVER OF RENTS AND TITHES TO PAY INTEREST AND ANNUITY.

his heirs * or assigns, to constitute or appoint some fit person to collect, receive, and pay the said rents, profits, and tithes, upon the trusts and for the intents and purposes aforesaid, with such reasonable salary for his care, pains, trouble, and expenses, as the said [*mortgagee*] and [*grantee*] shall think fit, not exceeding five pounds for every one hundred pounds to be received: PROVIDED ALWAYS *and it is hereby agreed and declared*, that the said [*mortgagee*] and [*grantee*], their executors, administrators, or assigns, shall not in anywise be charged with, or answerable for, any loss, misapplication, or nonapplication of the said rents, profits, and tithes of the said premises, or any part thereof, by reason of any default, neglect, or breach of trust, of or in the said [*receiver*], or any future collector or receiver to be appointed as aforesaid: *And* that such loss, misapplication, or nonapplication, and every receiver's salary, shall be wholly borne and paid by the said [*mortgagor*], his heirs, executors, or administrators. PROVIDED ALWAYS, *and it is hereby lastly agreed and declared* between and by the parties to these presents, that he the said [*receiver*], or other the receiver or receivers so to be appointed as hereinbefore is mentioned, shall not act and assist in the execution of the trusts and powers hereinbefore contained, unless and until some one half-yearly payment of the interest of the said sum of [*mortgage money*] pounds, or some one half-yearly payment of the said annuity of [*annuity*] pounds, shall be in arrear for the space of three calendar months (*d*). IN WITNESS, &c.

Mortgagee and grantee not to be answerable for receiver's deficiencies;

but same, with every receiver's salary, to be wholly borne by mortgagor.

Receiver not to act until half a year's interest or half a year's annuity be in arrear three months.

Schedule.

THE SCHEDULE to which the above (*or* within) written indenture refers.

(*d*) If brevity be not very desirable, it may be prudent to add a proviso, that the receiver's appointment shall not preclude mortgagee or grantee from exercising any of their remedies, *ut ante*, p. 444, 431.

RECEIVER BY TRUSTEES UNDER A POWER TO PAY INTEREST AND ANNUITIES.

*APPOINTMENT *of a* RECEIVER *of the Rents and Profits of Freehold and Leasehold Premises, by Two Trustees,* UNDER A POWER, *in a voluntary Settlement, and at the request of the Tenant for Life, for the purpose of paying Interest on a Mortgage of the Premises, and Interest on several Sums; and also several Life Annuities given by the voluntary Settlement, and to pay the Residue to the Tenant for Life.*

THIS INDENTURE, made the —— day of —— in the —— year, *George the Fourth,* &c. and in the year of our Lord 18—; BETWEEN [*trustee*], of, &c. and [*other trustee*], of, &c. of the first part; [*tenant for life*], of, &c. of the second part; and [*receiver*], of, &c. of the third part. WHEREAS by indentures of lease and release, bearing date respectively on or about the —— and —— day of —— 18—, and made between the Right Honourable —— Baroness Dowager —— (therein mentioned to be the widow of the Right Honourable —— Lord ——, Baron ——, of, &c. in Ireland,) since deceased, of the one part, and the said [*trustees*], of the other part; in consideration of the natural love and affection which the said Baroness Dowager —— bore towards her relations thereinafter named, and for other considerations therein mentioned, *She* the said Baroness Dowager —— *did* grant, bargain, sell, release, assign, and confirm unto the said [*trustees*], their heirs, executors, administrators, and assigns, *All that* the manor of, &c. with their and every of their rights, royalties, members, and appurtenances, *To hold* *the same (*Subject* nevertheless to a [*466] mortgage therein mentioned to have been made thereof by the said Baroness Dowager ——, to [*mortgagee*], of, &c. for one thousand years, by indenture bearing date

Parties.

Recital of lease, release, and assignment of freeholds and leaseholds to trustees, subject to a previous mortgage;

RECEIVER BY TRUSTEES UNDER A POWER TO PAY INTEREST AND ANNUITIES.

the —— day of ——, 18—, for securing the sum of [*mortgage money*] pounds and interest,) unto and to the use of the said [*trustees*], their heirs, executors, administrators, and assigns, according to the nature and quality, and for and during the continuance of the estate and interest of the said ——, Baroness Dowager —— therein;

upon trust for settlor for life;

Upon trust for her the said Baroness Dowager ——, and her assigns for life: *And* from and immediately after her decease, *Upon trust*, that they the said [*trustees*], and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, did and should, by mortgaging, selling, or otherwise disposing of the said manor, hereditaments, and premises, or any of them, or any part thereof, for all or any part of the estate, term, or interest, for which the same premises are thereby released, assigned, or otherwise assured, or by any other reasonable ways and means, levy and raise the sum of [*mortgage money*] pounds, and pay and apply the same in paying off and discharging the principal sum of [*mortgage money*] pounds, so secured by the said mortgage: *And also* levy and raise, and pay the several principal sums of money thereinafter mentioned, (that is to say,) the sum of —— pounds to the said [*trustee*], the sum of —— pounds to the said [*other trustee*], the sum of —— pounds to ——, the sum of —— pounds to, &c., the sum of —— pounds to ——, the wife of, &c. for her own sole and separate use: *And* should from time to time, by and out of the rents, issues, and profits of the same premises, or such part or parts thereof as should not have been sold under the trusts aforesaid, levy and raise, and pay and satisfy all such interest, as from and after the decease of the Baroness Dowager ——, should become due and payable for the said principal sum of [*mortgage money*] pounds, or any part thereof: *And also* levy and raise and pay interest at the rate of five pounds per cent. from the decease of the said Baroness Dowager ——, for the aforesaid several sums of —— pounds, —— pounds, &c. or such of them, * or such part thereof respectively, as should become due and payable, and should remain unpaid: *And also* levy and raise and pay all interest, which from time to time should become payable, for any sum or

and pay several sums given by the deed, to evade the legacy duty;

and out of the rents of premises not sold to pay interest on mortgage;

and interest from the death of the donor, on the several sums given by the deed;

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and pay interest on sums to be raised by mortgage;

sums of money which might be raised by way of mortgage under the trusts aforesaid: *And subject thereto*, from time to time, by and out of the rents, issues, and profits of the said manor, hereditaments, and premises, levy and raise and pay the several annuities or yearly sums of money thereinafter mentioned, (that is to say,) to ——, of, &c. an annuity or yearly sum of —— pounds, for the term of her natural life; to —— an annuity or yearly sum of —— pounds, for the term of her natural life; and to ——, a like annuity or yearly sum of —— pounds, for the term of his natural life; the same annuities or yearly sums respectively to be free from taxes and all other deductions whatsoever, and to be paid by two equal half-yearly payments in every year. *And subject*, and without prejudice, to the several trusts thereinbefore declared, should stand and be seised of, and interested in the said manor, hereditaments, and premises, or such part or parts thereof as should not have been sold under the trusts aforesaid, with their rights, members, and appurtenances, (but subject to any mortgage or mortgages which might have been made under the trusts aforesaid,) *In trust* for the said [*tenant for life*] (therein mentioned to be great nephew of the said Baroness Dowager ——,) and his assigns, for his life. *And* after the decease of the said [*tenant for life*], *In trust* for the first and every other son of the said [*tenant for life*], lawfully begotten, or to be begotten, severally and successively, according to seniority, in tail general, with divers remainders over. AND in the indenture now in recital, there was contained a proviso, declaring that it should be lawful for the said [*trustees*], and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, from time to time, to appoint an agent or receiver to manage the said manor and hereditaments, and to receive the rents, issues, and profits thereof, and to place and displace such agent or receiver at their or his pleasure, and to allow such agent or receiver such a salary or other compensation for his trouble *therein, as to the said [*trustees*], or the survivor of them, or the heirs, executors, administrators, or assigns, of such survivor, should seem proper. AND WHEREAS the said Baroness Dowager —— hath departed this life

RECEIVER BY TRUSTEES UNDER A POWER TO PAY INTEREST AND ANNUITIES.

and to pay several annuities to servants;

and subject to the several trusts, to stand seised of premises in trust for settlor's nephew for life;

remainder in trust for his first and other sons;

with remainders over.

Recital of a power to appoint a receiver.

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Recital of settlor's death.

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since the execution of the said recited indenture. And whereas no sale or mortgage hath hitherto been made of the said hereditaments and premises comprised in the said indentures, or any part or parts thereof, in pursuance of the trusts therein expressed in that behalf. And whereas the aforesaid mortgage debt of [*mortgage money*] pounds, and the eight other principal sums, so directed to be raised under the trusts of the said indenture of release as aforesaid, still remain unpaid; and a further advance of —— pounds having been made by the said [*mortgagee*], there is now due to him, on his aforesaid mortgage security, the principal sum of [*total mortgage money*] pounds. And whereas the said several persons, to whom the aforesaid several annuities are directed to be paid for their respective lives, are all living. And whereas the said [*trustees*] have, at the request of the said [*tenant for life*], consented and agreed to appoint the said [*receiver*] receiver of the rents of the estates comprised in the said indentures, with such powers and in such manner as hereinafter is expressed. Now this indenture witnesseth, that in pursuance and by virtue, and in exercise of the power for this purpose to the said [*trustees*], by the hereinbefore recited indenture of release given and reserved, and of all other powers and authorities whatsoever, enabling them in this behalf, *They* the said [*trustees*], at the request and by the direction of the said [*tenant for life*], (testified by his sealing and delivering these presents,) *have*, and each of them *hath*, nominated, constituted, and appointed; *And* by these presents *do*, and each of them *doth*, nominate, constitute, and appoint the said [*receiver*] to be their and each of their true and lawful attorney, receiver, or agent, with such powers and authorities, and for such purposes, as are hereinafter mentioned, (that is to say,) *With* full power and authority, from time to time, in the names of them the said [*trustees*], to ask, demand, recover, and receive of and from all and every the present and future tenants and occupiers of the said manors, messuages, hereditaments, and premises hereinbefore described, and so by the said recited indenture released and assigned as aforesaid, and every or any part thereof; and of and from all and every other person and persons liable to pay the same,

Recital that no sale or mortgage had been made.

Recital that mortgage debt, and the several sums given, still remain due;

and that a further advance had been made by mortgagee.

Recital that annuitants are still living.

Recital of agreement by trustees, at tenant for life's request, to appoint receiver.

Testatum.

Appointment of a receiver by trustees, in pursuance of a power, and at the request of tenant for life;

with power to receive and recover rents;

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ALL rents, arrears of rent, and all and every sums and sum of money that is or are, or shall or may be due or owing or payable for or in respect of the said manors, messuages, hereditaments, and premises, or any part thereof: AND on receipt of such rent or rents, or arrears of rent, or sum or sums of money, or any part thereof respectively, for them the said [*trustees*], and in their names, or in the name of the said [*receiver*], to give, sign, and execute any receipt or receipts, acquittance or acquittances, release or releases, or other discharge or discharges for the same: AND on nonpayment thereof, or any part thereof respectively, for them the said [*trustees*], and in their names, to bring, commence, carry on, and prosecute any action or actions, suit or suits, or other proceeding or proceedings whatsoever, and to take, or cause to be taken, any distress or distresses, or otherwise to act therein according to law; and to make, or cause to be made, any avowry or avowries, cognizance or cognizances, of or for such distress or distresses: AND *generally* to do, perform, and execute any act, deed, matter, or thing whatsoever, relative to the receipt or recovery of such rents, arrears of rent, and sums of money as aforesaid, or any part thereof, as fully, amply, and absolutely, to all intents and purposes, as they the said [*trustees*], as such trustees as aforesaid, might or could do in their own proper persons: *They* the said [*trustees*] hereby giving and granting unto the said [*receiver*] their full and whole power therein, and declaring that they will ratify and confirm all and whatsoever he the said [*receiver*] shall do, or cause to be done, in or about the premises, by virtue hereof. AND *it is hereby agreed and declared* between and by the said parties to these presents, that the said [*receiver*] shall pay and apply all and singular the rents and sums of money so to be received by him as aforesaid (after retaining and deducting thereout a salary or allowance of —— shillings in every pound, as a compensation for his trouble in collecting and recovering the same rents and sums of money) in manner following (that is to say), in the first place, in *keeping down the interest of the aforesaid mortgage debt [*total mortgage money*] pounds, and of the several other principal sums of money which, under the trusts in the said indenture of the —— day of ——, 18—, are so

and give acquittances;

and on nonpayment, to bring actions or make distresses;

and generally to do any act, &c. as fully as appointors could;

they hereby giving their whole power therein, and agreeing to ratify receiver's acts.

Declaration that receiver shall apply rents, after deducting his salary,

in keeping down the interest of the mortgage debt, and of the several sums given by the settlor;

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in paying the annuities;

and pay the surplus to tenant for life, or to the persons entitled to the premises.

directed to be raised as hereinbefore is mentioned and recited: And also in the payment of the said several annuities, directed to be paid under the trusts of the same indenture, or such of them as shall be for the time being subsisting. AND *it is hereby agreed and declared*, that the said [*receiver*] shall pay the ultimate surplus of the said rents and sums of money so to be received by him as aforesaid, to the said [*tenant for life*], or his assigns, or to the person or persons for the time being entitled by virtue of the said indenture of the —— day of ——, 18—, to the possession of, or the receipt of the rents and profits of the said manor, hereditaments, and premises, subject to the trusts in the same indenture expressed, for raising the said mortgage debt, and other the principal sums therein mentioned, and the interest thereof, and the said several annuities so directed to be raised as aforesaid. AND THE SAID [*receiver*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*trustees*], and each of them, their and each of their heirs, executors, and administrators; and also with and to the said [*tenant for life*], his executors, administrators, and assigns, that he the said [*receiver*] shall and will collect and receive, and faithfully pay and apply, all and every the rents and sums of money to be received by him by virtue of these presents, in such manner as hereinbefore is directed, touching the application thereof. AND shall and will, at all times hereafter, save, defend, keep harmless and indemnified, the said [*trustees*], and each of them, their and each of their heirs, executors, administrators, and assigns, and their and each of their lands and tenements, and goods and chattels, of, from, and against all actions, costs, suits, damages, claims, and demands whatsoever, for or in respect of, or on account of the misapplication or nonapplication of the same rents and sums of money, or any of them, or any part thereof, or otherwise in relation thereto. IN WITNESS, &c.

Covenant by receiver, with trustees and tenant for life, to collect and duly apply rents;

and indemnify trustees from all actions, &c. on account of his misapplication of rents.

*APPOINTMENT *of a* STEWARD (*a*) *of a Manor and Manors.*

STEWARD OF A MANOR.

KNOW ALL MEN BY THESE PRESENTS, *That* I [*lord* (or *lady*)], of, &c. (*b*) *have* given and granted, *And* by these presents *do* give and grant unto [*steward*], of, &c. gentleman, THE OFFICE of steward of my manor (*or* manors) of ——, in the county of ——, (and of every of them): AND I *have* constituted and appointed, *And* by these presents *do* constitute and appoint him the *said [*steward*] steward of the said manor (*or* manors, and of every of them), to keep and hold all courts be-

Grant.

Appointment.

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(*a*) A voluntary appointment of a steward of a manor by a lord or lady, solely seised of a manor, is frequently notified to the steward by word or letter, without any formal appointment being made. For a steward, either of a court baron or a court leet, Co. Litt. 61 b, may be retained by parol; and this retainer by parol is as effectual in all points until the steward is discharged, as the most effectual institution by patent or deed. A steward thus retained may examine a feme coverte, or take a surrender, either in or out of court, although there be no special custom to warrant it; *Smithson* v. *Cage*, Cro. Jac. 526; or make voluntary admittances, or do any other act incident to the office of a steward, as well as if he had a grant thereof by a patent or deed. Co. Cop. s. 45. Tr. 104; *Harris and Jay*, 4 Co. 30 a; *Lady Holcroft's case*, 4 Co. 30 b.; Hargr. n. Co. Litt. 59 a (1); Gilb. Ten. 221, 313. But a patent is necessary to the making of stewards of the king's manors. *Harris and Jay*, 4 Co. 30 a; Cro. Eliz. 699, S. C.; Co. Cop. s. 45, Tr. 104; Hargr. n. Co. Litt. 61 b (1); 5 Gwil. Bac. Abr. 189; *Vide* 1 Ann. st. 1, c. 7, s. 5 & 8. So in the case of a corporation aggregate, a patent or deed is requisite. Co. Cop. s. 45, Tr. 105. See further, 19 Vin. Abr. 596. *Steward* (F.); Com. Dig. *Copyhold* (R.) 5; *Leet* (M. 1).

A steward appointed by parol, by one solely seised, has the same powers as if appointed by deed.

But it is otherwise as to the steward of the king, or of an aggregate corporation.

(*b*) If it be wished that the stewardship should continue, notwithstanding the lord's decease, add,

TO CONTINUE AFTER LORD'S DEATH.

" for me, my heirs, and assigns, *have*," &c. *ut supra*.

STEWARD OF A MANOR.

longing to the said manor (*or* manors, or any of them,) at the usual times the same have been accustomably holden, and at such other times as he the said [*steward*] shall think fit and requisite. To HAVE, hold, and enjoy the said office of steward, and to take and receive all and singular the fees and profits thereto belonging, by him the said [*steward*], or his sufficient deputy, for and during (*c*) my will and pleasure (*d*). IN WITNESS whereof, I, the said [*lord*] have hereunto set my hand and seal,

Habendum, during pleasure.

Testimonium.

TO CONTINUE AFTER LORD'S DEATH.

(*c*) If the stewardship be to continue, notwithstanding the lord's decease, say,

"for and during the will and pleasure of me the said [*lord*], my heirs, or assigns."

FOR LIFE.

If for life, say,

"for and during the natural life of him the said [*steward*]."

[The lord of a manor may, by deed, grant the stewardship of the manor and of the courts thereto belonging for the life of the grantee. Litt. 378; Co. Litt. 233 b; *Bartlett* v. *Downes*, 3 Barnw. & Cres. 616.]

DURING GOOD BEHAVIOUR.

If during good behaviour, say,

"for and during such time as he the said [*steward*] shall well and faithfully demean and behave himself in his said office."

The stewardship of a court-leet cannot be granted for years, but of a court-baron it may.

[Where one made a grant for years of the stewardship of a court-leet and court-baron, it was held to be void as to the court-leet, being a judicial office; but good as to the court-baron, where the office was merely ministerial, the suitors being the judges of that court: but the grant appearing afterwards to be for years, determinable upon the death of the lessee, it was held good for both, because there was no danger of its going to executors or administrators. *Howard* v. *Wood*, Sir T. Jones, 126; 2 Lev. 345, *S. C.*; *ante*, p. 375. *Note by Mr. B.*]

Discharged steward, an attorney, compelled by *mandamus* to deliver court rolls.

(*d*) In the case of an attorney whose stewardship is determined, the court of law, of which he is admitted, will exercise a summary jurisdiction to compel him to deliver up the court rolls and muniments of his employer. *Ex parte Corpus Christi College*, 6 Taunt. 105. See also *Ex parte Grubb*, 5 Taunt. 206. *Cocks* v. *Harman*, 6 East, 405. *Hughes* v. *Mayre*, 3 Durnf. & East, 275. [Although a solicitor has a lien upon all papers delivered to him in that character, not only for professional business in the matter of the papers, but for all professional business whilst they remain in his hands, yet he has no lien, as solicitor, on papers which he receives as steward. *Chapernown* v. *Scott*, 6 Madd. 93. *Note by Mr. B.*]

the —— day of ——, [in the —— year of the reign of his Majesty *George* the *Fourth*, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord,] 18—. STEWARD OF A MANOR.

SIGNED, SEALED, AND DELIVERED, being first duly stamped (*e*), in the presence of } Attestation

(*e*) If the grant or appointment be made by letters patent, deed, or other writing, the stamp duty on it must be charged according to the annual profits of the stewardship, as regulated by the 55 Geo. 3, c. 184, sched. part 1, tit. GRANT. Stamp.

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GRANT *of the* STEWARDSHIP *of Courts of several Manors, in some of which, the Person appointing is solely seised, and in the others, of undivided Parts.* STEWARD OF MANORS.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, [*lord*], of, &c. *send greeting.* KNOW YE, that I, the said [*lord*], for divers good causes and considerations me thereunto moving, *have* for me, my heirs, and assigns, given and granted; *And* by these presents *do* give and grant unto [*steward*], of ——, in the county of ——, gentleman, THE OFFICE of high steward, and the place and execution of the stewardship of my manor or lordship and borough of ——, in the county of ——: *And* the office of chief steward, and the place and execution of the stewardship of my manor or lordship of ——, in the said county of ——: *And also* the office of steward, and the place and execution of the stewardship (to act either alone or in conjunction with the steward or stewards of the other undivided parts or shares of the manors next hereinafter mentioned) of my undivided moiety, or half Appointment. Stewardship of a manor and borough: of a manor; of half a manor,

STEWARD OF MANORS.

part of the manors or lordships of —— and ——, both in the said county of ——; *And* of my undivided third part, or share of the manor or lordship of ——, in the said county of ——: AND the holding and keeping of all customary courts, courts baron, courts leet, views of frankpledge, and all other courts, of what kind or nature soever the same may be, to the said several manors or lordships and borough, and every of them respectively, as far as I am interested therein, belonging or in anywise appertaining. TO HAVE, hold, execute, and enjoy the aforesaid several offices of steward, and the several places and executions of stewardship, and each and every of *them, apart and distinct; and the holding and keeping of all manner of courts usually held or kept within the aforesaid several manors or lordships and borough, and every of them, as far as I am interested therein: TOGETHER with all manner of fees, wages, rewards, profits, perquisites, emoluments, and advantages, and parts and shares of fees, wages, rewards, profits, perquisites, emoluments, and advantages whatsoever, to the said several offices, and every of them respectively, belonging or appertaining, or at any time or times heretofore accustomed and used to be paid, rendered to, and received by, the several stewards there respectively for the time being, or any of them: *Which* said grants by me made, and each and every of them, shall continue in force for the whole or any part thereof respectively, during the will and pleasure of me, the said [*lord*] (*a*), and no longer. IN WITNESS, &c.

and of third of a manor;

and the holding of all courts.

Habendum.

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with all fees, &c.

during pleasure.

The gentleman who drew the above appointment, said, "I am not prepared to say, what effect the foregoing appointment will have as to those manors, in which the person appointing has only undivided shares. However, I have throughout introduced words of severance; so that the appointment, as to those shares, will not prejudice that of the manors, whereof he has the entirety: and this appointment will at least prevent the owners of the other shares from acting as in case of a vacancy."

(*a*) *Vide ante*, p. 472 (*c*).

*APPOINTMENT *of a* DEPUTY STEWARD.

DEPUTY STEWARD.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, [*steward*], of, &c. gentleman, *send greeting*. WHEREAS (*a*) [*lord*], of, &c. esquire, by his deed-poll under his hand and seal, bearing date on or about the —— day of ——, 18—, *did* give and grant unto me the said [*steward*], *The office* of steward of his manors of —— in the county of ——, and every of them: *And* did thereby constitute and appoint me the said [*steward*] steward of the said manors, and every of them, to keep and hold all [and singular his court-leet, views of frankpledge, courts baron, and customary and other] courts belonging to the said manors, or any of them, at the usual times the same had been accustomarily holden, and at such other times as I the said [*steward*] should think fit and requisite. *To have*, hold, and enjoy the said office of steward, and to take and receive all and singular the fees and profits thereto belonging, by me the said [*steward*], or my sufficient deputy (*b*), for and during the will and * pleasure of [*476]

Recital of steward's appointment.

(*a*) It is not requisite that the original appointment should be recited. *Parker* v. *Kett*, 1 Lord Raym. 660. Com. Dig. *Poiar* (C. 4).

A recital is not requisite.

(*b*) It seems that a steward cannot appoint a general deputy, unless he be authorized so to do, either by the terms of his own appointment, Co. Cop. sect. 46, Tr. 107. Gilb. Ten. 284, 320, or by the special custom of the manor. *Lord Dacre's case*, 1 Leon. 288. But where a deputy may be appointed, the extent of his authority is as great as the steward's own authority, and his office consists in performing the self-same duties that the high steward himself is to perform. Co. Cop. sect. 46, Tr. 107. It was formerly held, that a deputy steward could not admit out of court, without a particular custom, Co. Cop. *ubi supra*, or an authority from the lord or head steward for that purpose. Bro. Abr. *Court Baron*, pl. 22. *Tenant per Copie*, pl. 26. However, later authorities establish, that a deputy steward may do any act which his principal might have done. *Parker* v. *Kett*, 1 Ld. Raym. 659. 1 Salk. 95.

Without authority or custom a steward cannot appoint a deputy.

Where a deputy may be appointed, his authority is as great as the steward's.

A deputy steward may admit out of court.

DEPUTY STEWARD.

Appointment of deputy steward.

the said [*lord*]. Now KNOW YE, that I the said [*steward*], by virtue of the power and authority given me by the said [*lord*], *do* by these presents constitute and appoint [*deputy*], of, &c. gentleman, my deputy steward of the said manors, and every of them, for and during my will and pleasure, to do, perform, and execute the said office in my stead and place, in all things as effectually as if I myself were personally present at the doing thereof: *He* the said [*deputy*], from time to time, whenever he shall be by me required so to do, duly accounting to me for all fines, heriots, and profits of the said courts; and also for all fees, perquisites, rewards, and profits, from the said office arising. IN WITNESS whereof, I the said [*steward*] have hereunto set my hand and seal, &c.

A deputy steward cannot make a general deputy.

12 Mod. 467, S. C. A deputy steward cannot make a general deputy, because it implies an assignment of his whole power, which he cannot assign over. 5 Bac. Abr. 208. *Offices* (L). For a deputy being only one who is authorized himself, he cannot delegate that authority; and if a deputy might make a deputy, such second deputy might also do the same; and so *ad infinitum*, which would be highly inconvenient. Lib. Reg. 446. But every steward, or deputy steward, may authorize another to do any special act for him; as to hold a court, to take surrenders, make grants by copy and admittances. *Lord Dacre's case*, 1 Leon. 288. Gilb. Ten. 284. *Parker* v. *Kett*, *ubi supra*.

Every steward or deputy steward, may appoint another to do any special act.

A deputy may be made by word, by writing, or by deed.

A general or a special deputy steward may be appointed by writing or by parol. Co. Cop. sect. 46, Tr. 107. 1 Leon. 288. 1 Ld. Raym. 661. However, the appointment of a deputy for either purpose, is most usually made by writing under hand and seal.

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DEPUTY STEWARD, WITH REDDENDUM.

APPOINTMENT *of a* DEPUTY STEWARD *of Manors, with a* REDDENDUM.

Appointment of a deputy steward.

KNOW ALL MEN BY THESE PRESENTS, *That* I, [*steward*], of, &c. Gentleman, steward of the manors of —— and —— in the county of ——, *do* by these presents

DEPUTY STEWARD, WITH REDDENDUM.

constitute and appoint [*deputy*], of, &c. gentleman, my deputy or under-steward of the said manors, to perform and execute the said office in my stead and place, in all things, as effectually as I could do myself if I were personally present, and performed and executed the same. To HAVE, hold, possess, and exercise the said office of deputy-steward of me the said [*steward*], for and during the term of our joint-natural lives (*a*) (*or* during my pleasure); AND TO TAKE and have, during the said term, for performing and executing the said office, all fees, wages, rewards, and profits, to the same office belonging: *But nevertheless* YIELDING AND PAYING (*b*) therefore unto me the said [*steward*], yearly and every year during the said term, the clear yearly sum of —— pounds, of lawful money of Great Britain, on the —— day of —— in the year. IN WITNESS, &c.

Habendum for joint lives of steward and deputy;

and to take all fees, &c.

Reddendum, a yearly sum to steward.

(*a*) If the steward be not steward for life, of course he cannot appoint for the joint lives. *Vide ante*, p. 472.

(*b*) Most usually there is also a bond or covenant for this purpose.

SPECIAL DEPUTY STEWARD.

APPOINTMENT *of a* DEPUTY STEWARD *for the* SPECIAL *Purpose of admitting an Heir, and taking a Surrender by way of Mortgage; or for taking a Surrender from Husband and Wife to a Purchaser.*

KNOW ALL MEN BY THESE PRESENTS, *That* I, [*steward*], of, &c. steward [by patent] of the manor of —— in the county of ——, *have* constituted and appointed, *And* by these presents *do* constitute and appoint [*deputy*], of, &c. my deputy steward (*c*), to hold and keep a special

Appointment of a deputy steward.

(*c*) If it be to take a surrender, either in or out of court, say, "to take one or more surrender or surrenders, according

TO TAKE SURRENDER FROM HUSBAND AND WIFE.

SPECIAL DEPUTY STEWARD.

court for the said manor, on the —— day of —— next, or on some day before the —— day of —— next, and then and there, as my said deputy steward, to admit [*heir*] (eldest son and heir at law of [*ancestor*], deceased, late a copyhold or customary tenant of the said manor), tenant to all and singular the premises which the said [*ancestor*] held of the said manor, and of which he died seised (that is to say), to one messuage, &c. &c. within the manor aforesaid. *To hold* to him the said [*heir*], his heirs and assigns for ever, at the will of the lord, *according to the custom of the said manor. And immediately after his said admission, to accept and take from the said [*heir*] a surrender by the rod of all and singular the said premises, *To the use* and behoof of [*mortgagee*], of, &c, his heirs and assigns for ever; *But with a Condition* that the said surrender shall be void on payment, by the said [*heir*], his heirs, executors, administrators, or assigns, to the said [*mortgagee*], his executors, administrators, or assigns, of the sum of [*mortgage money*] pounds, and interest for the same, after the rate of five pounds per centum per annum, on the —— day of —— next ensuing. And further, to perform and execute the said office in my stead and place, as far as I have here constituted and deputed him the said [*deputy*] my deputy as aforesaid, in all things, as fully and effectually as I could do myself if I were personally present, and performed and executed the same myself: *The* said [*deputy*] duly accounting to me for all heriots, fines, fees, and perquisites, that shall be due and received by him for the purposes aforesaid. In witness whereof, I have hereunto set my hand and seal, the —— day of —— 18—.

to admit heir,

and take mortgage surrender.

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General authority.

Deputy to pay fines, &c. to steward.

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to the custom of the said manor, of and from [*vendor*], of &c. and [ ] his wife, she being first solely and secretly examined touching her consent thereto, after the usual manner of surrenders in the like cases, of *All that* messuage, &c. *To the use* of [*purchaser*], of, &c. his heirs and assigns for ever, according to the custom of the said manor. And further to perform and execute," &c. *ut supra.*

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**A full and general* APPOINTMENT *by Devisees in Trust, of a Solicitor to the several Offices of* STEWARD, GAMEKEEPER, RECEIVER, *and* MANAGER *of very considerable Estates; with Authority to sell Timber, to contract for granting Leases, and to contract with the Lessors of the Leasehold Part of the Premises for renewals: and Power to appoint Deputy Stewards, Receivers, Bailiffs, Agents, Surveyors, or Attornies: the Monies the Steward shall receive to be applied in paying himself a poundage, Law Charges as the Attorney of the Trustees, and for Surveying, &c.; in paying Salaries, &c. to Deputy Stewards, &c.; in paying Annuities charged on the Estates; in paying Expenses of Repairs; and to account for and pay the Residue to the Trustees.*

THIS INDENTURE, made the —— day of ——, in the —— year, *George* the Fourth, &c, and in the year of our Lord 18—, BETWEEN [*two trustees*], of, &c. the devisees in trust named in the last will and testament, and a codicil annexed thereto, of [*devisor*], lately deceased, of the manors, messuages, lands, tenements, hereditaments, and premises hereinafter mentioned, of the one part, and [*steward*], of, &c. of the other part. (*Recite the will* of the said [*devisor*], deceased, whereby he devised *All* those manors, &c. unto the said [*trustees*], their executors, &c. for two several terms of ninety-nine years, and one hundred years, *Upon* the trusts, &c. *viz.*) AND WHEREAS the said [*steward*] was employed in the receipt of the rents and profits and management of the estates aforesaid

Parties.

Recital of devise of estates to trustees.

Recital of steward having been employed by devisor;

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and desire of trustees to appoint him steward, &c.

*by the said [*devisor*]; and the said [*trustees*] placing an entire confidence in the said [*steward*], they are desirous of appointing him to be steward, gamekeeper, receiver, or agent, manager, and superintendent of the several freehold, copyhold, and leasehold estates so as aforesaid comprised in the said terms of ninety-nine and one hundred years, and devised by the said recited will to the said [*trustees*], upon the trusts aforesaid, in the manner and for the several ends, intents, and purposes hereinafter particularly declared. NOW THIS INDENTURE WITNESSETH, that for carrying the said desire of them the said [*trustees*] into execution, *They* the said [*trustees*] *have*, and each of them *hath* made, ordained, constituted, and appointed, *And* by these presents *do*, and each of them *doth* make, ordain, constitute, and appoint the said [*steward*] to be their and each of their chief and sole steward of all those the said several manors or lordships of, &c.; AND ALSO to hold and keep all and singular the courts leet, courts baron, courts of view of frankpledge, customary and other courts, within the said manors, or any of them: AND to demand, sue for, and recover, have, receive, and take to and for the proper use and benefit of him the said [*steward*], all manner of fees, perquisites, profits, wages, rewards, and advantages whatsoever, to the office of steward of the said manors belonging or appertaining, and which have heretofore been accustomed to be had and received by the steward or stewards thereof respectively, to and for their respective use and benefit, for or by reason of the office of steward. AND FURTHER, that the said [*trustees*] [by virtue of the statutes in this behalf made and provided] *have*, and each of them *hath* empowered, authorized, nominated, and appointed, *And* by these presents *do*, and each of them *doth* empower, authorize, nominate, and appoint the said [*steward*] henceforth to be their and each of their gamekeeper of the said several manors or lordships hereinbefore named: *And* to take and kill such hares, pheasants, partridges, grouse, and other game, as he shall find upon the said manors, or any of them (*a*); and to do *therewith as they the said

First Testatum.

Appointment of steward,

to hold all manner of courts;

and to demand fees of office.

Appointment of gamekeeper,

to kill game;

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(*a*) If it be intended that the game killed shall be for the use of himself, or of any particular person, *vide ante*, p. 371.

[*trustees*], or the survivor of them, shall from time to time direct and appoint. (*b*) AND ALSO to take and seize all such guns, bows, greyhounds, setting dogs, lurchers, or other dogs to kill hares or conies, ferrets, trammels, low-bells, hayes, or other nets, harepipes, snares, or other engines for the taking and killing of conies, hares, pheasants, partridges, or other game, as within or upon the said several manors, or any of them, or the precincts or territories of the same, shall be had or used by any person or persons not legally qualified for that purpose; *And generally* to do, execute, and perform all such matters and things, for the preservation of the game within the said manors, as they the said [*trustees*], or either of them, might or could do if personally present. AND MOREOVER, they the said [*trustees*] *have*, and each of them *hath* made, ordained, constituted, and appointed, *And* by these presents *do*, and each of them *doth* make, ordain, constitute, and appoint the said [*steward*], their and each of their receivers, agent, and attorney, for and in the names and name of them and each of them, and the survivor of them, [but upon the trusts, and for the ends, intents, and purposes hereinafter expressed,] to ask, demand, levy, sue for, recover, and receive, by all lawful ways and means whatsoever, of and from all and every the present and future tenant and tenants of *All* and singular the freehold, copyhold, and leasehold manors, messuages, tenements, lands, and hereditaments comprised in the said several terms of ninety-nine years and one hundred years, and devised, or intended to be devised, to them the said [*trustees*] by the said recited will of the said [*testator*], deceased, upon the trusts aforesaid; and also of and from all other persons liable to pay the same, ALL and singular the rents, issues, and profits, fines upon copyholds, grants, or demises, and renewals of leases, heriots, and other casual profits, that are now in arrear and unpaid, in the hands of any of the under stewards or bailiffs, receivers or agents, of the same manors, messuages, tenements,

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and seize engines;

and to do all such things for preserving the game as the persons appointing could.

Appointment of receiver of

rents, fines, heriots, &c.

(*b*) If the trustees, or either of them, be under the degree of an esquire, the power to seize engines, &c. should be omitted. *Vide ante*, pp. 372, 374.

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lands, and hereditaments, * or any part thereof, and which shall hereafter grow due and be in arrear for or in respect of the same manors, messuages, tenements, lands, and hereditaments, or any of them, or any part thereof: AND upon non-payment of the same, or any part thereof, to enter and distrain upon the hereditaments and premises liable thereto; and the distress and distresses then and there found, to take, lead, drive away, and impound, and in pound to detain and keep, or otherwise to sell and dispose thereof, according to due course of law. AND ALSO to commence and prosecute any action or actions, suit or suits, in any court of law or equity, for the recovery of the said rents, issues, and profits, and for recovering, receiving, obtaining, and getting possession of all and singular and every or any of the said manors, messuages, tenements, lands, and hereditaments, or any fines, heriots, rents, sum or sums of money, duties or services, in respect thereof: *And* the same action or actions, suit or suits, to prosecute and follow, or to discontinue, or otherwise to act therein as he the said [*steward*] shall think proper to be advised: AND upon receipt of the same rents, arrears of rents, issues, and profits, or any part thereof, for them the said [*trustees*], and each of them, and the survivor of them, to give effectual receipts, acquittances, and discharges for the same. AND ALSO, from time to time, as the said [*steward*] shall think proper and necessary, to sell and enter into, and sign, seal, and execute, any contract or contracts for sale of any part or parts of the timberwood and underwood, growing and being upon any of the said manors, lands and premises comprised in the said terms of ninety-nine years and one hundred years, or either of them, and which they the said [*trustees*], or either of them, are or is, under or by virtue of the said recited will, authorized and empowered to fell and cut down. AND ALSO to sign and execute effectual receipts and discharges for the sum and sums of money which shall and may arise and become payable for and in respect of the sale of any such timber. AND ALSO to empower the respective purchasers of all or any such timberwood and underwood, for themselves, their agents, and workmen, to enter on the manors, lands, and premises

On non-payment to distrain;

to bring actions, &c.

to give receipts for rents, &c.

to sell timber.

To give receipts for purchase money of timber.

To empower purchasers to carry away timber.

*whereon the same shall be growing, and with horses, carts, and carriages, or without, to carry away the same; *And* to make sawpits and charcoal pits and hearths, and to do all such other acts as shall be necessary for converting, ordering, and managing the said timber and other trees on such convenient and proper places on the manors, lands, and premises whereon the same shall be growing or standing, as shall be from time to time assigned and set out by the said [*steward*] for that purpose. AND ALSO from time to time, in the names of them the said [*trustees*], and each of them, and the survivor of them, to enter into and upon, and inspect and survey all and every the said freehold, copyhold, and leasehold manors or lordships and hereditaments, at his free will and pleasure; and to view, search, and see the state and condition and defaults and wants of repair of the same, and of the buildings and the hedges and ditches thereof, and of all and every part and parts of the same hereditaments; *And* to repair and give orders, and enter into any contract for, and employ any person in repairing the same. AND ALSO for and in the names or name of them the said [*trustees*], and each of them, and of the survivor of them, and as their and his act and deed, from time to time, to enter into, sign and seal, and execute any contract or contracts for any lease or leases of all or any of the aforesaid devised lands and hereditaments, for such fines, and under such rents, for such terms, and upon such conditions, as in such contracts respectively shall be mentioned, and as shall be conformable to the powers of leasing hereinbefore recited, or any other power vested in them the said [*trustees*], or either of them, in that behalf. AND from time to time to contract with the several grantors or landlords for the time being, of all and every or any of the leasehold messuages, farms, lands, tenements, and hereditaments, by the said recited will bequeathed to the said [*trustees*] as aforesaid, for the renewal of any of the same leases, and for the quantum of the fines and fees to be paid in respect thereof, as to him the said [*steward*] shall seem meet. AND GENERALLY, to inspect, manage, oversee, and superintend all and singular the said freehold, copy-

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and to make saw pits, &c.

To inspect the estates, and order repairs.

To contract for granting leases.

To contract for renewals of the leasehold parts.

Generally to inspect, improve, &c. the estates.

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hold, and leasehold manors and *hereditaments: *And also* to do any act, matter, or thing, for the improving, bettering, and supporting the same and the income thereof, and the interest of the several persons entitled thereto in possession and remainder, in every particular, in the most beneficial manner and to the best advantage, and as the said [*steward*] shall, according to his uncontrolled discretion and judgment, think proper. AND *They* the said [*trustees*] *do*, and each of them *doth* hereby give and grant full power and authority unto the said [*receiver*], from time to time, as to him shall seem meet, to make, ordain, constitute, and appoint, any person or persons to be his deputy steward or stewards of all or any of the said manors and hereditaments aforesaid; and also to be his deputy-receiver or receivers, bailiff or bailiffs, agent or agents, surveyor or surveyors, attorney or attornies, for recovering or receiving the rents, issues, and profits aforesaid, or any of them, or any part thereof, and for making, executing, and completing any such contract or contracts for sale of timber, and granting leases as aforesaid, and for surveying and repairing, and managing and improving the freehold, copyhold, and leasehold hereditaments aforesaid; and also to act in all and singular the premises, in the same manner as he the said [*steward*] is hereby empowered to act therein; *And also*, from time to time, to change and remove any such deputy stewards, bailiffs, receivers, agents, surveyors, or attornies, and to appoint any others in his or their stead or place, when and so often as to him the said [*steward*] shall seem meet. AND GENERALLY, for him the said [*steward*] to do, execute, and perform any other act, deed, matter, or thing whatsoever, relating to all or any of the manors and hereditaments aforesaid, as fully and effectually to all intents and purposes whatsoever, as they the said [*trustees*], or either of them, might or could do if personally present; *And* they the said [*trustees*], do, and each of them doth hereby ratify and confirm, and promise and agree to ratify and confirm, all and whatsoever the said [*steward*] shall lawfully do, or cause to be done in or about the premises. AND THIS INDENTURE FURTHER WITNESSETH, that they the said [*trustees*] *have*, and each of them *hath* authorized,

Power to appoint deputy stewards, receivers, bailiffs, agents, surveyors, or attornies;

and to remove them and appoint others.

General power to steward.

Ratification of his acts.

Second Testatum.
Authority to

*directed, and appointed, *And* by these presents *do*, and each of them *doth* authorize, direct, and appoint the said [*steward*] to apply and dispose of, and account for all and singular the monies which shall come to his hands by virtue of these presents, and of the powers and authorities hereby vested in him as aforesaid (*save and except the* fees and perquisites of office, as steward of the manors aforesaid); in the first place, in payment from time to time to himself, the said [*steward*] of (sixpence) in the pound, upon and out of all monies which shall come to his hands, or be actually received by him, for or on account of the rents, arrears of rent, sale of timber, and other the sums which he is empowered and authorized to collect and receive, by virtue of this present indenture (which said sum of (sixpence) in the pound is to be the consideration and recompense for receiving the rents and monies aforesaid and keeping, settling, and arranging the accounts relating thereto): *And* in the next place, in payment of bills for law charges, fees, and disbursements (not including travelling expenses or journies) which shall become due to him the said [*steward*], as the solicitor, agent, or attorney of the said [*trustees*] respectively, in prosecuting or defending any action or actions, suit or suits, relating to the estates, rents, and monies aforesaid, and the surveying, mapping and planning, managing, improving, and superintending the same estates, aad the execution of the several powers and authorities vested in him the said [*steward*], exclusive of receiving such rents and monies, and keeping the accounts relating thereto as aforesaid: *And* in the next place, in payment of salaries, wages, and fees, which shall from time to time become due and owing to the several under and deputy stewards, receivers, bailiffs, surveyors, agents, and other persons, which he the said [*steward*] shall think proper to employ for the purposes aforesaid: *And* in the next place, in the paying and discharging all and singular the annuities or yearly rent-charges, which now are or shall continue charged upon all or any of the manors and hereditaments aforesaid, as the same shall, from time to time, become due and payable; *And* also in payment, from time to time, of the expenses

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steward to apply the monies,

in paying himself a poundage;

in paying himself law charges, as attorney of trustees,

and for surveying, &c.

in paying salaries, &c. to deputy stewards, &c.

in paying annuities charged on the estates;

in paying expenses of repairs;

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*to be incurred on account of the repairs which shall be made upon any of the hereditaments aforesaid, which the respective tenants thereof shall not be liable to pay: *And* in the next place, in payment of all fines, fees, and charges, which shall become due to the landlords for the time being of any of the said leasehold premises, for obtaining renewals thereof: *And* from and after the payment of the said several annuities and other sums of money, *In trust* from time to time, to answer, account for, and pay the balance remaining in the hands of the said [*steward*], unto the said [*trustees*], their executors, administrators, and assigns. IN WITNESS, &c.

to account for and pay the residue to trustees.

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JOINTURE.

APPOINTMENT *of a* JOINTURE (*a*), *either before or after Marriage, and of a* TERM *for securing it, under a Power in a Settlement.*

THIS INDENTURE, made the —— day of ——,

The origin of jointures.

(*a*) The rule of the common law, that the widow's acceptance of a collateral satisfaction of or out of lands in which she was not dowable, was no bar to her title to dower in those to which that title attached, united with the inconvenience which would have ensued after the passing of the Statute of Uses, induced the legislature, by that act, to enable the husband to bar effectually his wife's right to dower, by making a provision for her *before* marriage in lieu of it; and which is known by the name of her jointure. What the inconvenience would have been if it had not been obviated, the reader will understand from the following observations:—

At the period of passing the statute, the greatest part of the lands in England was vested in feoffees *to uses*. Now, since a widow was not entitled to dower of an *use*, Perk. s. 349. 2 Bla. Com. 331, her father or friends, upon her marriage, procured a settlement to be made of some particular lands of the intended husband, to his and his wife's *use*,

in joint tenancy for their lives, as a provision for her in the event of her surviving him. But the statute removed the partition between the *possession* in the feoffees, and the *use* limited to the *cestui que uses*, in declaring that the latter should attract the former; so that the legal inheritance in the husband's estates not settled upon the marriage no longer continued in the feoffees, but was instantaneously transferred by the operation of the act to the husband, the *cestui que use*. The unavoidable consequence of this would have been, to entitle the widow to dower in all her husband's unsettled estates of inheritance, and at the same time she might have retained the lands which had been settled upon her, in lieu of that right. *Vernon's case*, 4 Co. 1, *b* 2. *a*. Rop. Husb. and Wife, 456. To remedy this injustice, by the Statute *of Uses 27 Hen. VIII. c. 10, s. vi. it was enacted, "that whereas divers persons have purchased, or have estate made and conveyed of and in divers lands, tenements, and hereditaments, unto them and to their wives, and to the heirs of the husband, or to the husband and to the wife, and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband and to the wife for term of their lives, or for term of life of the said wife; or where any such estate, or purchase of any lands, tenements, or hereditaments, hath been, or hereafter shall be made to any husband and to his wife, in manner and form [above] expressed, or to any other person or persons and to their heirs and assigns, to the use and behoof of the said husband and wife, or to the use of the wife as is before rehearsed, for the jointure of the wife; that then, in every such case, *every woman* married, having such jointure made, or hereafter to be made, shall not claim nor have title to have any dower of the residue of the lands, tenements, or hereditaments, that at any time were her said husband's, by whom she hath any such jointure, nor shall demand nor claim her dower of and against them that have the lands and inheritances of her said husband; but if she have no such jointure, then she shall be admitted and enabled to pursue, have, and demand her dower by writ of dower, after the due course and order of the common laws of this realm; this act, or any law or provision made to the contrary thereof notwithstanding.

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27 Hen. VIII. c. 10. A woman shall not have both a jointure and dower of her husband's lands.

"VII. Provided, that if any such woman shall be lawfully expulsed or evicted from her said jointure, or from any part thereof, without any fraud or covin, by lawful entry, action, or by discontinuance of her husband, then every such woman shall be endowed of as much of the residue of her husband's tenements or hereditaments, whereof she was before dowable, as the same lands and tenements, so evicted and expulsed, shall amount or extend unto.

A woman shall be endowed whose jointure is recovered.

JOINTURE. of the first part; [*Margaret* (*b*)], the wife of the said [*hus-*
[*491] *band*], whose maiden name was [*Margaret G.*], of the

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A jointure after marriage may be taken or refused by the wife.

" IX. Provided also, that if any wife have, or hereafter shall have any manors, lands, tenements, or hereditaments, unto her given and assured after marriage, for term of her life, or otherwise in jointure, except the same assurance be to her made by act of parliament, and the said wife, after that, fortune to over-live her said husband, in whose time the said jointure was made or assured unto her, that then the same wife so over-living, shall and may at her liberty, after the death of her said husband, refuse to have and take the lands and tenements so to her given, appointed, or assured during the coverture, for term of her life, or otherwise in jointure, except the same assurance be to her made by act of parliament as is aforesaid, and thereupon to have, ask, demand, and take her dower by writ of dower, or otherwise, according to the common law, of and in all such lands, tenements, and hereditaments, as her husband was and stood seised of any state of inheritance at any time during the coverture; any thing contained in this act to the contrary thereof notwithstanding."

Definition of a jointure.

Upon this statute the modern legal jointure is founded. It is defined by Lord Coke, from the purview of the act, to be a competent livelihood of freehold for the wife, of lands or tenements, &c. to take effect presently, in possession or profit, after the death of her husband, for the life of the wife at the least, if she herself be not the cause of the determination or forfeiture of it. Co. Lit. 36 b. 37.

A legal jointure must be as beneficial in duration as dower.

In the construction of this statute, courts of law have regulated their decisions upon the validity of jointures, by reference to the widow's title to dower, in lieu of which jointures were substituted; so that as to the commencement, certainty, interest, &c. they have required the jointure to be as beneficial to the widow as her dower. If this object be effected, it is indifferent in what manner the estate is limited to the wife; for although the statute expressly mentions five forms of limitation only, yet these particulars are only expressed as examples, and not in exclusion of other cases which may fall within the meaning and intention of the act.

A rent-charge is usually given as a jointure.

The inconveniences which attend a limitation of land by way of jointure, are so numerous, that it has long been a general practice to limit a rent-charge to the intended wife for her life, as a jointure, to commence from the death of the husband, with powers of distress and entry, and generally with a term for years to a trustee, for further securing the payment of it, which has been found by experience to be much more convenient, both to the jointress and to the remainder man,

Advantages of this practice.

second part (*c*); and [*trustee*], of, &c. and [*other trustee*], *of, &c. of the third part. WHEREAS by indentures of

JOINTURE.

Recital of settlement, whereby

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as a more certain income is thereby provided for the former, and the latter continues in the possession and management of the whole estate. 1 Cru. Dig. 229, 2d edit. And by which means the freehold goes over to the remainder man, who may, when his estate falls into possession, suffer a recovery, if he be tenant in tail, without the concurrence of the jointress. Sug. n. Gilb. Uses, 148 (4).

(*b*) If the jointure be made before marriage, the intended wife will, of course, be always described by her maiden name. And if any portion be paid by her father, guardian, &c. make the person paying it a party of the third part.

BEFORE MARRIAGE.

If the lady be a minor, add,

ON A MINOR.

"[*father* or *mother*, &c.] of, &c. the father and natural guardian † of the said [*intended wife*]."

If the father be dead, and a testamentary guardian ‡ has been appointed, add,

WITH CONSENT OF TESTAMENTARY GUARDIAN.

"[*guardian*], of, &c. the guardian of the person and estate of the said [*intended wife*], appointed by the last will and testament of [*father*], of, &c. her late father, deceased."

If a Chancery guardian has been appointed, add,

CHANCERY GUARDIAN.

"[*guardian*], of, &c. the guardian of the person (*or*, of the person and estate) of the said [*intended wife*], appointed by the High Court of Chancery.‡

(*c*) If the power of jointuring does not authorize the creation of a term for securing the rent-charge, [as to which, see *Wykham* v. *Wykham*, 18 Ves. 395,] a trustee would be unnecessary and improper. For at law, if an estate be made to others in fee, or for the life of the jointress, upon trust for her, yet if the estate remain in them, although it be for her benefit, and by her assent, and by express words is declared to be in full satisfaction of her dower, yet this is no bar of her dower at law, for there it must be made to herself. Co. Litt. 36 b.; *Hervey* v. *Hervey*, 1 Atk. 563. But a trust estate being equally as certain and beneficial as what is required at law, it is a good equitable jointure in bar of dower. And even a covenant by the husband with trustees, previously to a marriage with an infant, to settle a jointure on her in lieu

Unless there be a term, trustee unnecessary.

A jointure limited to a trustee, is no bar at law.

A trust estate is a good equitable jointure.

† *Vide ante*, p. 399. ‡ *Vide ante*, p. 407.

JOINTURE.

lease and release, bearing date respectively on or about the —— and —— days of —— 17—, the release being

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of dower, although the infant be not a party to the articles, yet it is an equitable bar. *Jordan* v. *Savage*, 3 Bac. Ab. 717, *Jointure* (B.) 5; 2 Eq. Cas. Abr. 101, pl. 8, *S. C.*; Hargr. n. Co. Litt. 36 b. (5). Indeed, any provision, however precarious, and whether secured out of realty or personalty, which an adult, previously to marriage, accepts in lieu of dower, will be a good jointure in equity. *Charles* v. *Andrews*, 9 Mod. 152; *Williams* v. *Chitty*, 3 Ves. 545; Sug. Gilb. Uses, 151 (6). For if the intended wife be of age, and a party to the deed, as she is able to settle and dispose of all her rights, she is competent to extinguish her title to dower upon any terms to which she may think proper to agree. 1 Rop. 481. Accordingly, Lord Alvanley, adverting to this subject, in *Caruthers* v. *Caruthers*, 4 Bro. C. C. 513, said, "that if the wife had been an adult, she might have taken a *chance* in satisfaction for her dower, acting with her eyes open."

Any provision accepted by an adult before marriage, is a good equitable jointure.

Infants may be barred of dower by a legal jointure before marriage; or by an equitable jointure, unless it be precarious.

Infants are within the statute, and may be barred of dower by a legal jointure made before marriage. *Drury* v. *Drury*, 3 Bro. Par. Cas. 492; 4 Bro. C. C. 506 n.; 2 Eden, 60; Mr. Justice Wilmot's Opinions and Judgments, 117; Hargr. n. Co. Litt. 36 b. (7). By analogy to this rule, infants may also be barred by an equitable jointure; but they will not, like adults, be barred by a precarious provision; it must, to be effectual, although an equitable provision, be as certain a provision as is required, to operate as a legal bar. Thus, where, on the marriage of a female infant, an estate was settled *on the husband's mother for life*, remainder to the husband for life, remainder to the wife for life, in bar of dower: it was held that the settlement did not bind the wife, because the mother might, as in this case she did, survive the husband; and that the wife might therefore elect to take the provision under the settlement or her dower and free-bench. The mother's death before the husband would not have altered the case; for if the jointure be good at all, it must be so from the making of the settlement. *Caruthers* v. *Caruthers*, 4 Bro. C. C. 513. So if a provision previous to the marriage of a female infant, in bar of dower, thirds, and all claim upon the real and personal estate of the husband, be precarious and uncertain, as that the personal estate shall go according to the custom of London, it does not bar her. *Smith* v. *Smith*, 5 Ves. 189; Co. Lit. 36 b. 1st.

[In a late case it was held, that an infant was barred in equity of her dower by a rent-charge limited in trust for her by a settlement made before her marriage, to which her father was a party, although it appeared that the jointure was void at the time, for noncompliance with the terms of the power under which it was made, but was subsequently

made between [*father*], esquire, of the first part; [*trustee having the legal estate*], of the second part; the said [*husband*], therein described as the only son and heir apparent of the said [*father*], of the third part; [*two releasees and trustees to preserve contingent remainders*], of the fourth part; and [*trustees of term for raising younger children's portions*], of the fifth part; *All those* *several manors, &c. were granted, released, and assured by the said [*trustee having the legal estate*] and [*father*], to the said [*releasees*] and their heirs, [*To the uses* thereinafter limited: *And* it is by the said indenture of release declared, that the several hereditaments thereby respectively released, are and were so thereby respectively released,] *To the uses* thereinafter limited, and in part hereinafter mentioned (that is to say;) *To the use* of the said [*trustees of term for raising children's portions*], their executors, administrators, and assigns, for the term of five hundred years, without impeachment of waste, *Upon the trusts* thereinafter mentioned: *And* after the expiration, or other sooner determination of the said term of five hundred years, and in the mean time subject thereto, *To the use* of the said [*father*] and his assigns, during his life, without impeachment of waste, with remainder *To the use* of the said [*husband*] and his assigns, during his life, without impeachment of waste; with remainder *To the use* of the said [*releasees*] and their heirs, during his life, *In trust* to support the contingent remainders, with divers remainders over. *And* it was by the said indenture of release provided and declared, that it should be lawful for the said [*husband*], by any deed or deeds, or writing or writings, with or without power of revocation, to be by him sealed and delivered in the presence of two or more credible witnesses (but subject and without prejudice to the use or estate thereinbefore limited to the said [*father*], for his life, and to the raising and payment of certain sums of —— thousand pounds,

JOINTURE.

manors, &c. were conveyed.

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to the use of trustees for five hundred years;

remainder

to the use of father for life;

remainder to the use of husband for life;

with remainder to the use of trustees, to support contingent remainders.

Recital of power to husband

(subject to his father's life estate, and to the raising of certain sums,)

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confirmed by the remainder-man: which confirmation became *in event* operative to give it validity, thought it might have been defeated by the birth of a son of the marriage. *Corbet* v. *Corbet*, 1 Sim. & Stu. 612.]

JOINTURE.

and —— thousand pounds, and the interest thereof respectively, and such other principal money and interest as should happen to be thereafter charged and secured by the said [*father*], in pursuance of a power thereinbefore reserved to him in that behalf, and subject to the terms of years created, and to be created, for securing the same sums, principal money and interest respectively, and to the respective trusts of the same terms, to grant, limit, or appoint to, or to the use of any woman or women whom he the said [*husband*] might thereafter happen to marry, for her or their life or lives, and for her or their jointure or jointures, and in bar of her or their dower (over and above the jointure which he the said [*husband*] is empowered to make by a certain indenture of *release, bearing even date therewith), an annual sum or yearly rent charge, not exceeding such annual sum as should be proportioned to the fortune or fortunes which he the said husband should actually and effectually have and receive with such woman or women respectively, after the rate of eighty pounds by the year, for the sum or value of one thousand pounds (*d*), unless any such annual sum would, after that rate, be less than the sum of two hundred pounds by the year, in which case it should be lawful for the said [*husband*] to grant, limit, or appoint as aforesaid, any annual sum or rent-charge not exceeding the sum of two hundred pounds by the year, for such jointure or rent-charge, without regarding the said rate; such annual sum or sums to be payable tax free, and without any deductions whatsoever, and to be issuing out of, and charged and chargeable upon, all or any part of the said manors, &c. thereinbefore expressed to be thereby granted and released, with powers and remedies for recovering the same when in arrear; and such term and terms of years, for better securing the due payment thereof, to take effect immediately after the decease of the said [*husband*] (but subject and without prejudice as aforesaid;) and such grant, limitation, or appointment to be made either before or after such intermarriage, as to the said [*husband*]

to appoint to any after-taken wife for her jointure in bar of dower,

(over and above the jointure he is empowered to make by another deed,)

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any annual sum, in proportion to wife's fortune,

after the rate of 80*l.* per annum for 1000*l.*;

unless such annual sum would be less than 200*l.* per ann.

And in that case to appoint any sum not exceeding 200*l.* per annum,

such annual sum to be tax free, and charged upon manors, &c.

with powers, and term for securing the payment:

to take effect immediately after husband's decease (but subject as aforesaid:) and such appointment to

(*d*) *Vide post*, p. 496.

should seem meet. AND WHEREAS (*e*) the said [*husband*] hath lately intermarried (*f*) with the said [*Margaret G.*], *formerly [*Margaret A.*]. NOW THIS INDENTURE WITNESSETH, that (*g*) the said [*husband*], in pursuance of the

JOINTURE. be made either before or after marriage.

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Recital of marriage.

Testatum.

(*e*) If before marriage, say,

"AND WHEREAS† a marriage hath been agreed upon, and is intended to be soon had and solemnized between the said [*intended husband*] and [*intended wife*]."

BEFORE MARRIAGE. Recital of intended marriage.

(*f*) If the jointure be made after marriage, it will not bar the wife of her dower, either at law or in equity, unless she accept the jointure after her husband's death. Noy's Ten. 40. 1 Eden, 138. And if a jointure be made to a wife of lands before marriage, and after, the husband and wife alien by fine those lands so conveyed for her jointure, she will not be endowed of any other lands of her husband. But if the jointure had been made after marriage, notwithstanding the alienation thereof by the husband and wife, by fine, yet as her estate was originally waivable, and the time of her election came not till after the decease of her husband, she may claim her dower in the residue of his lands. But in the other case, the jointure of the wife made before marriage was not waivable at all. Co. Litt. 36, b. Dyer, 358, pl. 49. 1 Leon. 285.

Jointure after marriage is no bar to dower unless accepted after husband's death.

If a jointure be made before marriage, and the husband and wife alien it by fine, she is not dowable of his other lands; but it is otherwise, where the jointure is made after marriage.

(*g*) If before marriage, say,

" in consideration of the said intended marriage."

Recital of marriage.

BEFORE MARRIAGE.

and if any portion be paid, add,

PORTION.

" and of the sum of [£8000], of lawful money of Great Britain, to the said intended husband, in hand well and truly paid by the said [*father*], at or immediately before the sealing and delivery of these presents, in full for the marriage portion of the said [*intended wife*], the receipt and payment of which said sum of [£8000], he the said [*intended husband*] doth hereby acknowledge, and thereof, and of every part thereof, doth acquit, release, and discharge the said [*father*], his heirs, executors, and administrators, and every of them for ever, by these presents, he the said [*intended husband*], in pursuance," &c. *ut supra.*

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† If the lady be a minor, add,

" by and with the consent and approbation of the said [*father* or *guardian*], a marriage," &c. *ut supra.*

WITH CONSENT OF GUARDIAN.

JOINTURE.

power or authority to him in that behalf given or reserved, in and by the said recited indenture of release, and by force and virtue thereof, and of every other power, right, and authority to him reserved or given, in him vested, or in anywise enabling him in this behalf, *hath* granted, limited, and appointed, *And* by this deed, by him sealed and delivered in the presence of two credible witnesses, (*But subject* and without prejudice to the use or estate by the said recited indenture of release, limited to the said [*father*] for life (*h*), and to the raising and payment of the said sums of —— thousand pounds and —— thousand pounds, and the interest thereon respectively, or [*496] *otherwise, subject as in the said indenture of release is mentioned,) *doth* grant, limit, and appoint, unto the said [*wife* (*i*), *married name*], the wife of the said [*husband*],

Appointment by husband,

(subject to his father's life estate, and to the raising of several sums of money,)

unto his wife, in case she

Observations on the above form.

(*h*) The above appointment being subject to a previous life estate of the husband's father, it would not be an effectual jointure if made on an infant, either before or after marriage; *ante*, p. 492; or if made on an adult after marriage. *Ante*, p. 491. The parts of the above form, not included in parentheses, are adapted to ordinary circumstances.

A fraudulent execution of a power of jointuring will be set aside in equity.

(*i*) Where a power of jointuring was executed in favour of a wife, but with an agreement, that the wife should only receive a part as an annuity for her own benefit, and that the residue should be applied to the payment of the husband's debts, it was held to be a fraud on the power, and the execution was set aside, except so far as related to the annuity, the bill containing a submission to pay it, and only seeking relief against the other objects of the appointment. *Aleyne* v. *Belchier*, 1 Eden, 132; Appendix, Sug. Pow. 677, 2d ed., 710, 3d ed. S. C. So if there be a power to make a jointure under restrictions, as 100*l.* a year for every 1000*l.* and the lady having but a small portion, the husband or his friends advance a sum of money, in order colourably to enable him to make the larger jointure, a court of equity will reject such part as is more than proportional to the real fortune. *Lane* v. *Page*, Ambl. 235; *Lord Tyrconnel* v. *Duke of Ancaster*, Ambl. 239; 2 Ves. sen. 501, S. C. Because these are cases of fraud on the property of a third person, the remainder-man. Ambl. 135. The reader will observe, that in the first case, the bill submitted to pay the annuity; and in the other case, there was a consideration actually paid for the restricted jointure. But whether, in cases otherwise circumstanced, equity will not set aside the whole settlement, but merely that part which is infected with fraud, seems doubtful. For in ordinary cases of

The execution of a power to jointure, in proportion to the wife's fortune, will be good only to the extent of the actual amount.

Qy. Whether the execution be void *in toto*, or *pro tanto*.

*and her assigns, during the term of her natural life, in case (*k*) she should survive him the said [*husband*], *One* annual sum or yearly rent-charge of —— hundred pounds of lawful money of Great Britain, to be yearly issuing, arising, and payable out of, and charged and chargeable upon all and singular the said manors, &c. comprised in the said recited indentures of the —— and —— days of ——, 18—; and by the same indenture of release respectively granted and released, or expressed and intended so to be, with their respective rights, members, and appurtenances. To HAVE, hold, receive, and take the said yearly rent-charge of —— hundred pounds (subject as aforesaid) unto the said [*wife*] and her assigns, during her life, in case she should survive the said *husband*]; such yearly rent-charge of —— hundred pounds to be for the jointure of the said [*wife*], and in bar of her dower (*l*),

JOINTURE.

should survive him, of a yearly rent-charge, payable out of manors, &c. comprised in settlement.

Habendum to wife for life, in case she should survive her husband;

such rent-charge to be for her jointure, and in

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fraud, the whole transaction is undone, and the parties are restored to their original situation. *Daubeny* v. *Cockburn*, 1 Meriv. 644.

But it is not requisite that the portion should be actually received by the husband; for if it is settled so as to come for the benefit of the family, in the fair way of contracting and making settlements, that comes for the benefit of the husband and his family; and what is settled fairly for the benefit of the family, comes to the benefit of the husband. And therefore if a part or the whole of the jointure be settled to pay the interest to the husband for life, then to increase the younger children's fortune; and if none, to the survivor of the husband and wife, although there be no younger children; and the wife be the survivor, and consequently entitled to the settled portion, the jointure is not thereby invalidated. But if the wife's portion, or any part of it, be settled to her own separate use, the jointure will be totally or partially set aside, according to the circumstances. *Earl of Tyrconnel* v. *Duke of Ancaster*, 2 Ves. sen. 501, 2; Ambl. 239, *S. C.*

If the portion be settled for the benefit of the family, it is sufficient;

but not if it be settled to the wife's separate use.

(*k*) If before marriage, say,

BEFORE MARRIAGE.

" in case the said intended marriage should take effect, and in case the said [*intended wife*] should survive," &c. *ut supra.*

(*l*) If it be the intention, add,

ON BAR OF FREE BENCH.

" free-bench, and thirds, at the common law, or by custom or otherwise, which she can or may, or otherwise might have, claim, or be entitled to, in, to, or out of all

JOINTURE.

bar of dower; and to be paid half-yearly, without any deduction.

and to be paid to the said [*wife*], or her assigns, at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, by equal half-yearly payments, at or on the days or times following, (that is to say,) the —— day of ——, and the —— day of ——, in each and every year, by equal portions, free from taxes, and without any other deductions whatsoever; the first half-yearly payment thereof to begin and be made on such of the said days as shall first happen after the decease of* the said [*husband*].

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Appointment of a power of distress for a jointure rent-charge.

AND the said [*husband*] *doth* hereby further grant, limit, and appoint, that in case the said annual sum or yearly rent-charge of —— hundred pounds, or any part thereof, should happen to be in arrear and unpaid by the space of fourteen days, next over or after either of the said days or times hereby appointed for the payment thereof, and on which the same ought to be paid as aforesaid, *Then*, and in every such case, and so often as it shall so happen, it shall and may be lawful to and for the said [*wife*] and her assigns, into and upon the said manors, &c. so charged with the payment of the said annual sum of —— hundred pounds, or intended so to be, or into and upon any part thereof, to enter and distrain for the same annual sum or yearly rent-charge of —— hundred pounds, and all arrears thereof, and the distress and distresses then and there found and taken, to take, lead, drive, carry away, and impound, and in pound to detain and keep, until the said annual sum or yearly rent-charge of —— hundred pounds, and all arrears thereof, and all costs, charges, damages, and expenses whatsoever, sustained or occasioned by or attending the making, taking, and keeping any such distress, shall be fully paid and satisfied; *And* in default of payment thereof in due time after any such distress or distresses shall be made and taken, to appraise, sell, and dispose of such distress or distresses, or any part thereof, or otherwise to act therein

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or any of the messuages, lands, tenements, or hereditaments whereof he the said [*husband*] now is, or shall or may, during the said *(intended)* coverture, be seised or entitled; the said yearly rent-charge to be paid," &c. *ut supra.*

according to due course of law, in like manner as in cases of distress for non-payment of rent, reserved upon common leases; *To the intent*, that thereby and therewith the said [*wife*], or her assigns, shall and may be fully paid and satisfied the said annual sum or yearly rent-charge of —— hundred pounds, and all arrears thereof, or so much thereof as shall be remaining due and unpaid, and all costs, charges, and expenses whatsoever, sustained or occasioned for or by reason of the nonpayment thereof: AND FURTHER, that in case the said annual sum or yearly rent-charge of —— hundred pounds, or any part thereof, should at any time happen to be behind and unpaid by the space of twenty-eight days, next over or after either of the said days or times appointed for the payment thereof as aforesaid, *Then*, and in such case, and *so often as the same shall so happen (although no formal or lawful demand thereof shall be made (*m*)), it shall be lawful for the said [*wife*] and her assigns, into and upon all and every of the said manors, &c. charged therewith as aforesaid, or into and upon any of them, or any part thereof, in the name of the whole, to enter, and the same to have, hold, and enjoy, and the rents, issues, and profits thereof, and of every part thereof, to receive and take to and for her and their own use and benefit, until she or they shall be thereby or therewith, or otherwise, fully paid and satisfied the said annual sum or yearly rent-charge, and all arrears thereof, and also so much of the said annuity or yearly rent-charge as shall grow due during such time as the said [*wife*], or her assigns, shall continue in possession of the said hereditaments and premises, after such entry as aforesaid; and also all such losses, costs, charges, damages, and expenses as shall be sustained or occasioned by reason of the non-payment of the said annual sum or yearly rent-charge, or any part thereof, at or on the days or times hereinbefore appointed for payment thereof (*n*) AND THIS INDENTURE FURTHER WITNESSETH, that for the better securing the payment of the said

Appointment of power of entry for securing a jointure rent-charge.

[*499]

Second Testatum.

(*m*) *Vide ante*, p. 18, (*i*).

(*n*) If the power does not authorize the creation of a term, the demise to the trustees must of course be omitted.

JOINTURE.

annual sum or yearly rent-charge to the said [*wife*] and her assigns, during her natural life, in case she should survive the said [*husband*], *He* the said [*husband*], in pursuance of the power and authority to him in that behalf given or reserved in and by the said recited indenture of release, and by force and virtue thereof, and of every other power, right, and authority to him reserved, or in him vested, or in anywise enabling him in this behalf, *hath* granted, bargained, sold, limited, appointed, and demised; *And* by this present deed, by him sealed and delivered in the presence of two credible witnesses, *doth* (subject, and without prejudice as aforesaid) grant, bargain, sell, limit, appoint, and demise unto the said (*two trustees*), their executors, administrators, and assigns, ALL and singular the said manors, messuages, farms, lands, woods, tenements, and hereditaments, *comprised in the said indentures of the —— and —— day of ——, 17—, and hereby charged with the said annual sum or yearly rent-charge of two hundred pounds as aforesaid, with their respective rights, members, and appurtenances: AND the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits, of the same premises. To HAVE AND TO HOLD the said manors, messuages, &c. and all and singular other the premises hereby granted, limited, appointed, and demised, or intended so to be, with their and every of their rights, members, and appurtenances, unto the said [*two trustees*], their executors, administrators, and assigns, for and during, and unto the full end and term of five hundred years, to commence and be computed from the decease of the said [*husband*], and thence next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste: UPON TRUST *nevertheless*, in case the said annual sum or yearly rent-charge of two hundred pounds, or any part thereof, should be behind and unpaid by the space of forty days next over or after either of the said days whereon the same is appointed to be paid as aforesaid, (although no formal or legal demand shall be made,) *Then*, and so often as the same shall happen, that they the said [*two trustees*], or the survivor of them, his executors or administrators, shall and do, from time to time, by and out of the rents, issues,

Appointment by husband, in pursuance of the power,

(subject as aforesaid)

unto trustees.

Parcels comprised in settlement;

[*500]

and the reversion, &c.

Habendum to trustees for 500 years from husband's death;

upon trust in case rent-charge should be in arrear forty days.

Trustees, out of the rents, &c.

JOINTURE.

and profits of the said manors, &c. or by demising, leasing, selling, or mortgaging the said premises, or any part thereof, for all or any part of the same term; or by bringing actions against the tenants or occupiers of the same premises, or any of them, for the rents then in arrear; or by such other ways and means as to them or him shall seem meet, raise and levy such sum or sums of money as shall be sufficient from time to time to pay and satisfy the said annual sum or yearly rent-charge of two hundred pounds, or so much thereof as shall from time to time happen to be in arrear and unpaid; together with all costs, charges, damages, and expenses attending the levying and raising, or occasioned by the non-payment of the said annual sum or yearly rent-charge, or any part thereof; and shall and do pay, apply, and dispose of the same monies so to be levied and raised, in or towards *payment and satisfaction thereof accordingly. AND UPON FURTHER TRUST, that they the said [*trustees*], and the survivor of them, his executors and administrators, do and shall permit and suffer the person or persons to whom the next and immediate reversion or remainder, expectant upon the determination of the said term of five hundred years, of and in the premises therein comprised, shall for the time being belong, to receive the residue or surplus of the rents and profits which shall remain after, and not be applied in or towards the execution and performance of the trust of the said term of five hundred years. PROVIDED ALWAYS, that when the trusts hereinbefore declared of and concerning the said term of five hundred years, shall have been performed or satisfied, or shall have become unnecessary or incapable of taking effect, and the costs and charges of the trustees of the same term respectively, and their respective executors, administrators, and assigns, in and about the execution and performance of the said trusts, shall have been fully paid or satisfied, *Then*, and immediately thenceforth, the said term of five hundred years of and in the premises hereby demised, or intended so to be, or of so much thereof as shall remain unsold and undisposed of for the purposes aforesaid, shall cease, determine, and be void. PROVIDED

or by demising, &c.

or by bringing actions against tenants for rents in arrear,

or by such other ways, &c.

raise and levy sufficient money to pay arrears of rent-charge;

with all costs, &c.

[*501]

And upon further trust, to permit the persons in remainder to receive the residue of the rents and profits.

Cesser of the term.

This appoint-

JOINTURE.

ment not to prevent any further appointment.

ALWAYS (*o*), that the grant, limitation, and appointment hereby made as aforesaid, or any clause, matter, or thing herein contained, shall not extend to prevent or hinder the said [*husband*], at any time or times hereafter, from granting, limiting, and appointing any further yearly rent-charge or yearly rents-charge to the use of the said [*wife*] and her assigns, during her life, if she should survive him, pursuant to and under the terms and restrictions expressed in the power of jointuring for that purpose reserved by the said recited indenture of release, or the power reserved by the said indenture of release bearing even date therewith. IN WITNESS, &c.

(*o*) Whenever the husband does not exercise his power to the full extent, it is prudent to add a similar proviso to the above.

[502]

IN FEE, SUBJECT TO ESTATES FOR LIFE.

APPOINTMENT *in Fee of Part of the Premises included in a Power subject to the Estates for Life of the Appointor, and his Wife* (*a*).

Recital of the deed creating the power.

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*appointor*], of, &c. *sendeth greeting*. WHEREAS by in-

An appointment under a power should be expressed to be in execution of it, and of every other authority; and should show that the formalities required are complied with.

(*a*) In every well-drawn deed of appointment, these three points should be embraced; 1st, the deed executing the power should be expressed to be in exercise of it; 2dly, of every other authority enabling the donee in that behalf; and, 3dly, it should be shown in the body of the deed, that the formalities required to the execution of the power, are complied with. The first clearly evinces the intention of the person executing the power, which is particularly necessary where he has an interest as well as a power; the second guards against any misrecital of the deed creating the power, and in some cases has reached powers understood to have been extinguished; and the third affords internal evidence of the ceremonies having been complied with; and moreover the

*denture of lease and release, bearing date, &c. (*Recite the deed creating the power.*) And whereas the said

IN FEE, SUBJECT TO ESTATES FOR LIFE.

Recital of desire and determination to appoint.

attestation indorsed on a deed executing a power, should always state precisely that the formalities were attended to. Sug. Pow. 184, 2d edit.; 193, 3d edit.

The attestation should state that the formalities were attended to.

If the power, or a consent to the execution of a power, be required to be executed under hand and seal, attested by witnesses; *Wright* v. *Wakeford*, 17 Ves. 454; 4 Taunt. 213; Sug. Pow. Appen. No. 6; or if a person having a power be required to exercise it, by any deed or writing under his hand and seal, to be by him duly executed in the presence of, and to be attested by witnesses; *Doe* dem. *Mansfield* v. *Peach*, 2 Maule and Selw. 576; or by deed or deeds, writing or writings, under his hand and seal, attested by witnesses; *Wright* v. *Barlow*, 3 Maule and Selw. 512; and the attestation contain the words "sealed and delivered" only, without the word "signed," it is not a valid execution of the power, although in the body of the deed executing the power it is stated to be "under hand and seal, attested by and duly executed in the presence of the two credible persons, whose names are hereupon indorsed as witnesses hereto;" and although the witnesses after the death of the person, or one of the persons executing the power, sign a memorandum on the deed, certifying that it was signed as well as sealed in their presence. For every thing required to be done in the execution of a power, must be strictly complied with, and must be completed in the lifetime of the person by whom it is to be executed. *Hawkins* v. *Kemp*, 3 East, 410.

If signing be required to be attested, the attestation should have the word "signed."

Previously to these cases, the common form of an attestation of a deed had always been "sealed and delivered by the within named [*A. B.*], in the presence of." For signing was not essential to the validity of a deed at common law; sealing and delivery alone being sufficient. Perk. s. 130. *Goddard's case*, 2 Co. 5 a.; Co. Litt. 7 a. 35 b. However, by the Statute of Frauds, 29 Car. 2, c. 3, all conveyances of lands or hereditaments must be in writing, and signed by the parties making the same, or their agents thereunto lawfully authorized by writing; and therefore signing is now as necessary to the perfection of a deed as sealing. But as an attestation is not essential to the validity of an ordinary deed; *Garrett* v. *Lister*, 1 Lev. 25; and as the Statute of Frauds does not require an attestation, the old form was invariably used in attesting the execution of every kind of deed. And even after an objection had been raised in practice, in consequence of the omission of the word "signed" in the attestation of the execution of a power required to be signed and attested by witnesses, it was a general opinion of the bar, that the objection was not well founded. See Sugden's Letter to

Since the Stat. of Frauds, a deed should be signed as well as sealed.

The attestation of an ordinary deed need not have the word "signed."

IN FEE, SUBJECT TO ESTATES FOR LIFE.

*[*appointor*] is desirous, and hath determined to exercise the said recited power of appointment in favour of [*ap-*

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mination to exercise the power.

Sir Samuel Romilly, on the late decisions upon the omission of the word "signed" in the attestation to instruments executing powers, and on the act for amending the laws in that respect. However, the above decisions settled the point. But the alarm thereby excited, in consequence of various titles being liable to the same objection, induced the legislature to pass the following act, 54 Geo. 3, c. 168, commonly called Mr. Preston's Act.

54 Geo. 3, c. 168.

"*An Act to amend the Laws respecting the Attestation of Instruments of Appointment and Revocation, made in exercise of certain Powers in Deeds, Wills, and other Instruments.* [Royal Assent, 30th July, 1814.]

"Whereas powers, authorities, and trusts are in many cases required to be executed by deeds or instruments, signed by or under the hands of the persons executing the same, or persons consenting to or directing acts respecting such powers, authorities, and trusts, are frequently required to signify such consent or direction by deeds or instruments signed by them, or under their hands, and it has been the ordinary practice, in the memorandum of attestation of deeds, to express the facts of sealing and delivery only: And whereas doubts have arisen respecting the validity of deeds or instruments so attested and requiring signature, although the same may have been actually signed by the persons whose signature is required thereto, and the titles of many purchasers, and of other persons claiming under such instruments, may be defective for want of the insertion of the word "signed," or some word to that effect, in the memorandum of attestation thereof: And whereas it is expedient that the titles of purchasers and other persons should not be disturbed, merely on account of the omission to express the fact of signature in the memorandum of attestation of any such deed or other instrument already made: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That every deed or other instrument, already made with the intention to exercise any power, authority, or trust, or to signify the consent or direction of any person whose consent or direction may be necessary to be so signified, shall (if duly signed and executed, and in other respects duly attested) be, from the date thereof, and so as to establish derivative titles, if any, of the same validity and effect, and no other, at law and in equity, and proveable in like manner, as if a memorandum of attestation of signature, or being under hand,

Deeds, &c. *already* executed without a memorandum of attestation deemed valid.

pointee], *his eldest son, in order that the fee simple of the messuage, &c. hereinafter particularly described (be- IN FEE, SUBJECT TO ESTATES FOR LIFE.

had been subscribed by the witness or witnesses thereto; and the attestation of the witness or witnesses thereto, expressing the fact of sealing, or of sealing and delivery, without expressing the fact of signing, or any other form of attestation, shall not exclude the proof or the presumption of signature.

"II. And be it enacted, that this act shall extend, and be construed to extend to all deeds and other instruments already made in exercise of powers, authorities, and trusts, of sale, exchange, partition, selection, nomination, discretion, leasing, jointuring, raising portions, and other charges, and for appointing new trustees and other powers, authorities, and trusts whatsoever, or made for evidencing assent, consent, request, direction, or any other like circumstance in reference to the execution of any such powers, authorities, or trusts. To what deeds this act shall extend.

"III. Provided always, and be it further enacted, that this act shall not extend, nor be construed to extend, to revive or give effect to any appointment, revocation, or other assurance heretofore made, as far as the same has been avoided by entry or claim, or by suit at law or in equity, or by any other legal or equitable means whatsoever; nor shall this act affect or prejudice any suit at law or in equity now depending, for avoiding any deed or other instrument of appointment, revocation, or assurance. Act not to have a retrospective operation; nor affect any existing suit at law, &c.

"IV. Provided always, and be it further enacted, that if any person who has made any such entry or claim, or who has brought any such suit, or has defended any suit, for the purpose of avoiding any such appointment, revocation, or other assurance, should release the benefit of the same entry, claim, suit, or defence, within six calendar months next after the passing of this act, then such entry or claim, or suit or defence, shall not prejudice or avoid any such appointment, revocation, or other assurance, but every such appointment, revocation or other assurance, shall be and remain in force under this act as if no such entry or claim had been made, or suit brought or defended. Appointments, &c. not to be affected.

"V. Provided always, and be it further enacted, That nothing in this act contained shall extend, or be construed to extend, to affect any question respecting any instrument not within the provisions of this act, and which may want any formality in the attestation of any witness or witnesses thereto, but such instrument shall have the same force and effect as it might have had if this act had not been made; anything in this act contained notwithstanding." No instrument, unless within the provisions of this act, to be affected.

This statute is only retrospective, its operation being limited to transactions prior to the 30th July, 1814. The question may therefore fre- The statute is not prospective in its operation.

IN FEE, SUBJECT TO ESTATES FOR LIFE.

ing part of the *messuages, &c. comprised in the said indenture of release,) may be absolutely vested in the said [*appointee*], his heirs and assigns for ever, after and subject to the several estates of the said [*appointor*] and

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To prevent the future recurrence of the question, signature should not be required; and the general attestation should be "signed, sealed, and delivered."

quently occur in regard to future executions of powers. To prevent its recurrence as much as possible, every conveyancer should expunge from his common forms any expression which may be considered to require the word "signed" to be inserted in the attestation. And solicitors should *in every case*, make the attestation, "signed, sealed, and delivered." If the latter precaution were generally adopted, the old form would be forgotten, and the question would never arise. Sug. Pow. 257, 3d ed.

As the act only extends to a defective attestation of signature, if publication of a will be required to be attested, the attestation should have the word "published;"

and if sealing be required to be attested, the attestation should have the word "sealed."

The act only extends to a defective attestation of signature; and therefore if a power be required to be executed by will, or any writing or appointment in the nature of a will, to be signed *and published* in the presence of, and attested by two or more credible witnesses, a will signed by the donee, and attested thus—"witness *A. B. C. D.*" without any attestation of the publication, is not a valid execution of the power, and the case is not within the act. *Moodie* v. *Reid*, 1 Madd. Rep. 516. 7 Taunt. 355. [So where the will concluded thus, "this is my last will and testament *made and signed* on the, &c. in the presence of the *witnesses*. *Stanhope* v. *Keir*, 2 Sim. & Stu. 37.] Or, if lands be limited to such uses as the donee shall direct, by deed or writing under his hand and seal, attested by two or more credible witnesses, the power is not effectually executed by a will, signed and sealed, but attested by the subscribing witnesses as being signed in their presence, without noticing the sealing; nor can the defect be cured by calling one of the witnesses to prove that the will was actually sealed in their presence as well as signed. *Doe* dem. *Hotchkiss* v. *Pearce*, 6 Taunt. 402: 2 Marsh. 102, *S. C.*

It seems that during the donee's life, defects in the attestation may generally be remedied;

It seems, that during the life of the donee of the power, defects in the attestation may generally be supplied by means of a re-execution, either in the presence of the former, or of new witnesses, or by means of a new deed, properly executed and attested. *Hawkins* v. *Kemp*, 3 East, 410; 3 Pres. Abs. 75. For as the previous deed was not a valid execution of the power, it seems that the case must be considered just in the same light as if no deed whatever had been made. According to *Cole* v. *Perkin*, 12 East, 471, new stamps do not appear to be necessary on a re-execution of a deed. *Vide ante*, Vol. 1, p. 507. But the death of the appointee is an impediment against giving operation to the deed by a subsequent attestation: for a deed cannot commence in operation at a time when the grantee or appointee is not in existence.

but the death of the appointee is an impediment.

[ ] his wife, for their respective lives, and the said estate of the trustees for supporting contingent remainders. NOW KNOW YE, AND THESE PRESENTS WITNESS, that for carrying the said determination into effect, and also by virtue and in exercise of the power and authority to the said [*appointor*], by the said recited indenture of release for this purpose given, limited or reserved, as hereinbefore is mentioned, and of all other powers and authorities whatsoever enabling him in this behalf, *He* the said [*appointor*], doth by this deed or writing, by him (signed,) sealed, and delivered, in the presence of, and attested by the two persons whose names are intended to be indorsed hereupon, as witnesses to the (signing,) sealing, and delivery of these presents by the said [*appointor*], irrevocably direct, limit, and appoint, *that ALL THAT messuage, &c. situate, &c. (being part of the hereditaments comprised in the said indenture of release, and thereby subjected to the appointment of the said [*appointor*],) and every part and parcel of the the same, with their appurtenances, shall henceforth go, remain, and be [*And* that the said indentures of lease and release shall, as to the same messuage, &c. operate and enure,] TO THE USE of the said [*appointee*], his heirs and assigns, for ever; *Subject nevertheless* and without prejudice to the several estates for the life of the said [*appointor*] and [ ] his wife, respectively, of and in the same messuage, &c. hereby appointed. IN WITNESS whereof, I, the said [*appointor*] have hereto set my hand and seal, the —— day of —— [in the —— year of the reign of his Majesty (*George*) the (*Fourth*), by the grace of God, of the United Kingdon of Great Britain and Ireland King, Defender of the Faith and] in the year of our Lord 18—.

IN FEE, SUBJECT TO ESTATES FOR LIFE.

Testatum.

Appointment in pursuance of a power.

[*507]

Parcels.

To the use of appointee in fee;

subject to the estates for life of appointor and his wife.

Testimonium.

SIGNED, SEALED, AND DELIVERED, (being first duly stamped (*b*),) in the presence of us.

Attestation.

(*b*) Stamp, one pound fifteen shillings, 55 Geo. 3, c. 184.

Stamp.

OF A TRUST ESTATE IN A MOIETY TO ONE, AND OF OTHER MOIETY TO FIVE, IN FEE, WITH POWER OF REVOCATION.

*APPOINTMENT *by a Widow, under a Power in a Marriage Settlement, of a* MOIETY *of a Moiety in an* EQUITABLE ESTATE *in Lands, to* ONE *Child in* FEE; *and of the* REMAINING MOIETY *of a Moiety to the other* FIVE *Children of the Marriage, as* TENANTS IN COMMON, *in* FEE; *subject as to both Appointments to the Appointor's Life Estate therein; with a Power of general or partial* REVOCATION.

Recital of marriage settlement, being a grant of a moiety of a reversion in fee, expectant on an estate for life, with power for the wife to appoint same among the children of the marriage, subject to the parents' life estates.

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*appointor*], of &c. widow, *sendeth greeting.* WHEREAS, by an indenture (*a*) bearing date on or about the —— day of ——, 18—, and made between [*husband*], then of, &c. since deceased, of the first part; the said [*appointor*], (by her then name and addition of [*maiden name*], spinster,) of the second part; and [*two trustees*], of, &c. of the third part, (being the settlement made previously to the marriage then intended to be, and afterwards duly solemnized, between the said [*husband*] and the said [*appointor, maiden name*]), *All that* undivided one half-part or moiety, of her the said [*appointor,*] then [*maiden name*], of and in *All those* messuages &c. was duly conveyed and assured (*subject* to the estate for life of [*tenant for life*], of, &c. in the same hereditaments, which has long since determined by his death), *To the use* of the said [*appointor*], then [*maiden name*], her heirs and assigns, until the solemnization of the said then intended
[*509] marriage; *And* after the *solemnization thereof, and the decease of the said [*tenant for life*], *To the use* of the said [*two trustees*], and the survivor of them, his heirs

(*a*) A bargain and sale for a year was not adopted in the above instance, as a grant alone is sufficient to convey remainders or reversions. *Vide ante*, p. 96 (*a*).

OF A TRUST ESTATE IN A MOIETY TO ONE, AND OF OTHER MOIETY TO FIVE, IN FEE, WITH POWER OF REVOCATION.

and assigns, *Upon trust*, to permit and suffer the said [*appointor*], then [*maiden name*], and her assigns, to receive and take the rents, issues, and profits thereof, for the term of her natural life; *And* after her decease, *Upon trust*, to permit and suffer the said [*husband*] and his assigns (in case he should be then living), to have, hold, and enjoy the same, and receive and take the rents, issues, and profits thereof, during the term of his natural life; *And* after the several deceases of them the said [*husband*] and [*appointor*], then [*maiden name*], then *Upon trust*, and to and for the only proper use of all and every the child and children of the body of the said [*husband*], on the body of the said [*appointor*], then [*maiden name*], to be begotten, in such parts, shares, and proportions (*b*), as the said [*appointor*] should, notwithstanding her coverture (*c*), either by her last will and testament in writing,

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Although the words "for such estate or estates," be omitted in the power, yet it seems a fee may be appointed.

(*b*) Notwithstanding the omission in the above power of the usual words, "for such estate or estates," yet it seems clear that estates in fee may be appointed. *Daniel* v. *Upton*, Noy, 80; Latch. 9, 39, 134, S. C.; *Liefe* v. *Saltingstone*, 1 Mod. 189; 1 Freem. 149, 163, 176; 2 Lev. 104; Carter, 232, S. C.; *Spring* dem. *Titcher* v. *Biles*, 1 Durnf. & East, 435, n.; *Tomlinson* v. *Dighton*, 1 P. Wms. 149; 1 Salk. 239; Com. 194; 2 Eq. Cas. Abr. 309, pl. 13. But it would be clearer, if the words "manner and form" were added. *Rex* v. *The Marquis of Stafford*, 7 East, 521.

A wife may execute a naked or a collateral authority, although coverture be not dispensed with.

(*c*) A wife may, without her husband, execute a *naked authority*, whether given before or after coverture, and though no special words are used to dispense with the disability of coverture. Co. Litt. 112, a, 187, b. *Bayley* v. *Warburton*, 2 Com. 494. *Burnet* v. *Mann*, 1 Ves. sen. 157. The rule is the same, where both an *interest* and an authority pass to the wife, if the authority is *collateral* to, and does not flow from the interest; because then the two are as unconnected as if they were vested in different persons. *Gibbons* v. *Moulton*, Finch. 346; Hargr. n. Co. Litt. 112 a, (6); 4 Vin. Abr. 59, pl. 13. But unless there be a dispensation with coverture, it seems that a power, coupled with an interest, cannot be exercised during coverture. 1 Pres. Abs 340. It may be released or extinguished, 3 Atk. 703, by a fine or recovery; Pres. Watk. Conv. 252; [or as to copyholds by a customary surrender or recovery.] "The construction of law on a power coupled with an interest is very different from a naked power over another person's estate, and that distinction has been taken in the cases of feme covert."

But not, it seems, a power coupled with an interest; [though it may be released, or extinguished;]

OF A TRUST ESTATE IN A MOIETY TO ONE, AND OF OTHER MOIETY TO FIVE, IN FEE, WITH POWER OF REVOCATION.

*or by any deed or deeds, writing or writings, to be by her duly and legally executed in the presence of three or more

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Per Lord Hardwicke, *Herle* v. *Greenbank*, 3 Atk. 714; and see *Marquess of Antrim* v. *Duke of Buckingham*, 1 Ch. Cases, 18; 2 Freem. 168, S. C. *Cawking* v. *Parrett*, 2 Freem. 18; *Blithe's case*, 2 Freem. 91.] And if a power be given to a single woman, to be executed by her "being sole," it cannot be executed by her during coverture. *Lord Antrim* v. *Duke of Buckingham*, 1 Ch. Ca. 17; 2 Freem. 168; 3 Salk. 276; 1 Eq. Ca. Abr. 343, pl. 3; Pow. Pow. 31—43; Sug. Pow. 149, 2d edit.; 156, 3d edit. [In cases of copyhold lands, the surrender, and of freehold lands the conveyance, should be to such uses as she, whether covert or sole, and notwithstanding her coverture, shall appoint. 1 Pres. Abs. 339.—*Note by Mr. B.*]

nor a power to be executed "being sole."

A wife may convey lands in performance of a condition.

As a feme covert may, without her husband, convey lands in execution of a mere power or authority, so may she, with equal effect, in performance of a *condition*, where land is vested in her on condition to convey to others. W. Jones, 137, 138. The reason why, in these instances, the wife may convey without her husband, seems to be, that he can receive no prejudice from her acts, but a great one might arise to others, if his concurrence should be essential. Yet if a legal estate of freehold be vested in a married woman, in trust for another, the better opinion, sanctioned by uniform practice, is, that no effectual conveyance can be made, unless she and her husband join in a fine or recovery of the estate. 1 Pres. Abs. 337. This was the opinion of Jones, in the case of *Daniel* and *Upley*. But the judges, Whitlock and Dodridge, dissented from Jones, and held, that the husband's joining was not any more requisite than in the other cases. W. Jones, 137. Jones's opinion, however, seems to be most conformable to the strictly legal doctrine; and his thus distinguishing a *trust* from a *power* and a *condition* may be accounted for. Trusts are properly the subjects of consideration for the courts of equity only; and though in them the legal estate is made subservient to the trust, yet the courts of law take notice of trusts for very few purposes. Butl. Fearne's. Rem. 35. Preston on Shelley's case, 58. 1 Preston on Estates, 311. Nor will it be easy to find an authority for departing from any rule about the effect of legal conveyances, merely in respect of their being a performance of trusts. Harg. n. Co. Litt. 112 a, (6). Another reason for this distinction may be drawn from the consideration, that if a married woman were allowed to convey a trust estate, without her husband's concurrence, she might convey it before the several objects of the trust were satisfied, for which he might jointly with her be responsible to the *cestuis que trust*: a reason

According to the prevailing opinion, a legal estate of freehold in a married woman, in trust, can only be conveyed by a fine or recovery of husband and wife.

Trusts belong to courts of equity only.

credible witnesses, give, grant, convey, limit, declare, direct, or appoint the same: *And* in default of, and subject to such appointment, *Upon other trusts* in the now reciting indenture mentioned. AND WHEREAS the said [*husband*] departed this life in or about the month of —— in the year —— 18—, leaving the said [*appointor*] his widow, and [*A. B.*], [*C. B.*], [*D. B.*], [*E. B.*], [*F. B.*], and [*G. B.*], their only children, and no other issue. AND WHEREAS the said [*appointor*] is desirous, and hath determined to exercise the power given or limited to her by the said hereinbefore in part recited indenture, by appointing the said moiety in the same indenture comprised, of the said messuage or tenement, lands, and hereditaments, and the fee-simple and inheritance thereof, unto the said [*A. B.*], [*C. B.*], [*D. B.*], [*E. B.*], [*F. B.*], and [*G. H.*], their heirs and assigns, in the shares or proportions, and in the manner hereinafter mentioned. NOW, THEREFORE, KNOW YE, AND THESE PRESENTS WITNESS, that for carrying the said determination into effect, *She* the said [*appointor*], pursuant to and

OF A TRUST ESTATE IN A MOIETY TO ONE, AND OF OTHER MOIETY TO FIVE, IN FEE, WITH POWER OF REVOCATION.

Recital of husband's death, leaving appointor, his widow, and six children.

Recital of desire to execute power in favour of children.

Testatum.

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which does not apply to the mere execution of a power, or performance of a condition. 1 Fonb. Treat. Equity, 92, 5th edit.

But, as connected with the above doctrine, it may be observed, that although the wife of a trustee in fee, or of a mortgagee in fee, of a forfeited mortgage, is at law entitled to dower, Sug. n. Gilb. Uses, 369; Noy's Ten. 16, yet a fine on that account is never required by a purchaser; because, if the wife of a trustee or mortgagee were to be so ill advised as to prosecute her legal claim, equity would at this day restrain her from proceeding, by injunction, and would undoubtedly compel her to pay all the costs. Sug. Vend. 303, 5th ed.; 317, 6th ed. For the legal estate vested in a trustee in fee, or in a mortgagee in fee of a forfeited mortgagee, is in equity protected against his judgments and other incumbrances; *Finch* v. *Earl of Winchelsea*, 1 P. Wms. 278; 1 Madd. Chan. 2nd ed. 466; and against his bankruptcy, *Bennet* v. *Davis*, 2 P. Wms. 318; 3 P. Wms. 187 (A); 1 Cooke's Bankrupt Laws, 7th ed. pl. 461; *Bennet* v. *Pope*, 2 Freem. 71; and free-bench of his wife, *Hinton* v. *Hinton*, 2 Ves. sen. 631; 1 Sand. Uses, 3rd ed. 279; and from the tenancy by the curtesy of the husband of a female trustee, or mortgagee in fee, *Cashborn* v. *English*, 7 Vin. Abr. 156; 2 Eq. Ca. Abr. 728; 1 Atk. 603, S. C.; 1 Cru. Dig. 2nd ed. 523; Sug. Gilb. Uses, 18, n.

Although the wife of a trustee or mortgagee in fee, is at law entitled to dower, yet a fine on that account is never required.

For the estate of the trustee or mortgagee is in equity protected against his judgments and other incumbrances; his bankruptcy; his wife's dower, and free-bench; and from the curtesy of the husband of a female trustee or mortgagee.

OF A TRUST ESTATE IN A MOIETY TO ONE, AND OF OTHER MOIETY TO FIVE, IN FEE, WITH POWER OF REVOCATION.

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Appointment of a moiety of a moiety in a trust estate in lands, to one child in fee, subject to the appointor's life estate therein.

by force and virtue, and in exercise (*d*) and execution of the power and * authority given, limited, or reserved to her by the said indenture of settlement hereinbefore recited, and of every other power or authority whatsoever, in anywise enabling her in this behalf, *doth* by this deed or writing, duly and legally executed (*e*) by her, in the presence of the three credible persons, whose names are hereupon indorsed as witnesses attesting her execution of these presents, give, grant, limit, declare, direct, and appoint, *That* ONE undivided moiety, or equal half-part or share, the whole into two equal parts or shares being considered as divided, of and in the said moiety in the said indenture comprised, of the messuages or tenements, lands, hereditaments, and premises described or mentioned in the said indenture, with their and every of their rights, members, and appurtenances, shall henceforth remain, continue, and be; *And* that the trustees or trustee of the said indenture of settlement, and his or their heirs, shall henceforth stand and be seised or possessed of the same (*subject* nevertheless, and without prejudice to the life estate or interest of her the said [*appointor*] therein), UPON TRUST for the said [*G. B.*], her heirs and assigns, for ever (*f*). AND the said [*appointor*], pursuant to, and by force and virtue, and in further exercise and execution of the power or authority so given, limited, or reserved, to her as aforesaid, and of every other power or authority whatsoever, in anywise enabling her in this behalf, *doth* by this deed or writing, so executed and attested as aforesaid, give, grant, limit, declare, direct, and appoint *That* THE OTHER remaining moiety, half-part, or share, of and in the moiety in the said recited indenture comprised, of the messuages or tenements, lands, hereditaments, and premises hereinbefore mentioned, with their and every of their rights, members, and appurtenances, shall henceforth remain, continue, and be, *And* that the

Appointment of a remaining moiety of a moiety in a trust estate, in lands to five children, as tenants in common in fee, subject to the appointor's life estate therein.

(*d*) *Vide ante*, p. 502, (*a*).

(*e*) In the operative part of an appointment under a power, the words of the power should be followed as nearly as possible.

(*f*) As to the doctrine of illusory appointments, see the next form but one, p. 523 (*a*).

said trustees or trustee of the said indenture of settlement, and his or their heirs, shall henceforth stand and be seised or possessed of the same (*subject* nevertheless, and without prejudice to the estate or interest for life of the said *[*appointor*] therein). UPON TRUST for the said [*A.B.*], [*C.B.*], [*D.B.*], [*E.B.*], and [*F.B.*], in equal shares and proportions, as tenants in common, and for their several and respective heirs and assigns for ever. PROVIDED ALWAYS (*g*),

OF A TRUST ESTATE IN A MOIETY TO ONE, AND OF OTHER MOIETY TO FIVE, IN FEE, WITH POWER OF REVOCATION.

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(*g*) Under a power of appointment, the donee may either appoint absolutely, or in the deed executing the power he may reserve a power of revocation and new appointment, although not expressly authorized to do so by the deed creating the power; *Adams* v. *Adams*, Cowp. 651, *Earl of Cardigan* v. *Montague*, Sug. Pow. 3rd ed. 311, 690. Pow. Pow. 288; and such powers may be reserved *toties quoties*. *Lady Hasting's case*, 3 Keb. 7. *Becket's case*, Lane, 118. *Hele* v. *Bond*, Prec. Chan. 474, S. C. 1 Eq. Ca. Abr. 342, pl. 6. Sug. Pow. 3rd ed. 312, 667. *Digge's case*, 1 Co. 173 b. And where even a particular power is given to two persons, or the *survivor of them*, with or without power of revocation, they may execute a *joint* appointment, and reserve to the survivor a power of revocation and new appointment. *Brudenell* v. *Elwes*, 1 East, 442. 7 Ves. 382, S. C.

Under power of appointment, the donee may appoint absolutely, or reserve a power of revocation and new appointment.

The donee may regulate the mode of revocation, as it need not be attended with the same solemnities as the power of appointment; *Winstanley's case*, 3 Keb. 7, cited; but he cannot, on a future appointment, dispense with the necessity of conforming to the requites of the original power; Prest. Watk. Conv. 149. *Sir S. Jones* v. *Lady Manchester*, Vend. 198; for by the revocation, the original power is revived. 2 Pres. Abs. 274, 277.

The donee may regulate the mode of revocation; but on a future appointment, he must observe the original power.

A *will* is always revocable; and therefore where the power is executed by will, an express power of revocation need not be reserved. *Hatcher* v. *Curtis*, 2 Freem. 61, S. C. 2 Eq. Ca. Abr. 671, pl. 3. And see 1 Ves. 139. 2 Ves. 77, 612. *Lisle* v. *Lisle*, 1 Bro. C. C. 533. *Laurence* v. *Wallis*, 2 Bro. C. C. 319. But where the power is executed by *deed*, unless a power of revocation be reserved in the deed, the appointment cannot be revoked, although there be a power of revocation in the instrument creating the power; *Worrall* v. *Jacob*, 3 Meriv. 256; and even if the original power expressly authorize the donee in the most unlimited terms to appoint, and to revoke his appointments from time to time; for the law will not endure a prospective power like this; but on every execution a new power of revocation must be reserved. *Hele* v. *Bond*, *ubi supra*. The decisions as to the necessity of reserving a power of revocation in order to authorize a party

Where a power is executed by *will*, a power of revocation need not be reserved.

Where the power is executed by *deed*, unless a power of revocation be reserved, the appointment cannot be revoked, whether it be of personal or real estate.

OF A TRUST ESTATE IN A MOIETY TO ONE, AND OF OTHER MOIETY TO FIVE, IN FEE, WITH POWER OF REVOCATION.

*that it shall be lawful to and for the said [*appointor*], and she hereby reserves to herself full power and authority, by

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to revoke an appointment by deed, have always been considered to apply to personal as well as to real estate. Sug. Pow. 317, 2d edit.; 324, 3d edit.

Power of general or partial revocation.

Although in the *original* settlement a power of revocation only be reserved, yet a power to limit new uses is implied, and may be executed,

unless the contrary be declared by the settlement.

And although in the *original* settlement there be only reserved a power to revoke the uses thereby declared, yet a power is implied to limit new uses out of the first seisin, and may be executed accordingly; *Fowler* v. *North*, 3 Keb. 7; *Anon.* 1 Cha. Ca. 242; "for he that has power to revoke, has power to limit." S. C. by the name of *Witham* and *Bland's case*, 2 Cha. Ca. 46, (*contra*, *Anon.* 1 Stra. 584; but that case seems of doubtful authority, and it is reported "*ex relatione aliorum.*") However, it is otherwise if a contrary intention can be collected from the whole settlement; or if an estate be settled to uses with a power of revocation, and it be declared, that upon the revocation the uses shall cease, and the estate shall remain to the use of the settlor and his heirs; after revocation he cannot limit new uses out of the old seisin, it being exhausted on the execution of the use to him in fee. *Atwaters* v. *Birt*, Cro. Eliz. 856. New uses can only be raised by means of a conveyance under the ownership.

But a power, reserved in a deed *executing* a power, will not authorize a limitation of new uses.

But every power reserved in a deed *executing* a power, will be strictly construed; and therefore a mere power of revocation in such a deed will not authorize a limitation of *new* uses. *Digge's case*, 1 Co. 173 b. *Ward* v. *Lenthall*, 1 Sid. 343.

It seems that a power of revocation may be reserved on the execution of a power simply collateral.

Upon the authority of *Wall* v. *Thurbone*, 1 Vern. 355, an opinion has prevailed, that a power of revocation cannot be reserved on the execution of a power *simply* collateral, when it is not authorized by the original power. See Powell on Powers, 307. In that case the wife had a power under her husband's will to appoint an estate amongst her daughters; and she executed the power with power of revocation, but never actually revoked the settlement. The book says, "as to the power of revocation, the case may be eased of that, for it was only an authority in the wife; and that being once executed, she could not reserve such power to herself." In the first place then, (says Mr. Sugden,) it appears that the point did not call for a decision, and it is very far from clear, that the *dictum* was not the argument of the counsel. Such a doctrine would be very inconvenient, and certainly cannot be considered as settled.

If a power require the deed of revocation to contain a power

If a power require the deed of revocation and limitation of new uses to contain a power to revoke by deed, yet upon the execution of such reserved power of revocation the donee need not reserve another power

OF A TRUST ESTATE IN A MOIETY TO ONE, AND OF OTHER MOIETY TO FIVE, IN FEE, WITH POWER OF REVOCATION.

*any deed or deeds, instrument or instruments in writing, to be sealed and delivered by her in the presence of three or more credible witnesses, and to be attested by the same witnesses, or by her last will and testament in writing, to be signed and published by her in the presence of and attested by three or more credible witnesses, absolutely to revoke, determine, and make void the gifts, grants, limitations, declarations, directions and appointments, trusts and estates, hereinbefore expressed, declared, and contained, as to the whole or any part of the said hereditaments and premises hereby limited and appointed, or intended so to be, *So* and in such manner that the hereditaments and premises, to which such revocation shall extend, may stand settled and limited in the same manner, and subject to the same power of appointment, as if these presents had not been made and executed; any thing hereinbefore contained to the contrary notwithstanding. IN WITNESS, &c. *ut ante*, p. 507.

SIGNED, SEALED, AND DELIVERED (*h*) by the above (*or* within) named [*appointor*] (being first duly stamped (*i*),) in the presence of us,

to revoke. *Phillips* v. *Phipps*, V. C. M. T. 1818. Sug. Pow. 322. 3d edit.

(*h*) *Vide ante*, p. 502.

(*i*) *Vide ante*, p. 507 (*b*).

to revoke, on executing such reserved power, the donee need not reserve another power to revoke.

OF COPYHOLDS TO FIVE, IN FEE.

*APPOINTMENT *by a Widow, under an exclusive Power in a Surrender of* COPYHOLDS *of Inheritance,* TO FIVE *younger Children, in* FEE, *as Tenants in Common, according to the Custom of the Manor; with* VARIATIONS *adapted to the Circumstances of a similar* PREVIOUS APPOINTMENT *having been made* TO THREE *of them, and by their Consent a new Appointment made to the Five.*

Parties, appointor and her five younger children.

THIS INDENTURE, made the —— day of ——, in the year of our Lord, 18—; BETWEEN [*appointor*], late of, &c. but now of, &c. widow, of the one part; and [*A. B.*], [*C. B.*], and [*D. B.*] all of, &c. spinsters; [*H. K.*], of, &c. gentleman, and [*E.*] his wife, and [*F. B.*], of, &c. esquire, which said [*A. B.*], [*C. B.*], spinster, [*D. B.*], [*E. K.*], and [*F. B.*], are the five younger children of the said [*C. B., appointor,*] widow, by [*husband*], esquire, her deceased husband, of the other part.

Recital of surrender of copyholds of inheritance by deceased husband,

WHEREAS the said [*husband*] being seised to him and his heirs of certain copyhold hereditaments, held of the manor of ——, in the county of ——, did on or about the —— day of ——, in the year 17—, in contemplation of the then intended marriage with the said [*appointor*], then [*maiden name*], surrender into the hands of the lord of the said manor of ——, *All those* messuages, &c. being part of the copyhold hereditaments of which he was so seised as aforesaid, *To the use* of himself the said [*husband*] and his assigns, for his life; remainder *To the use* of [*appointor*] the mother then [*maiden name*], spinster, for her life, for her jointure, and in bar of dower; remainder *To the use* **and behoof* of such child or children of the body of the said [*husband*] on the body of the said [*appointor*], the mother, to be begotten, or of the issue of any such child

to the use of himself for life; remainder to the use of appointor for life, in bar of dower; remainder to the use of such child or children, of

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OF COPYHOLDS TO FIVE, IN FEE.

or children, and for such estate and estates, and with such limitations and remainders over, and under and subject to such provisoes, restrictions, and payments, to and amongst and for the benefit of all and every or any such child or children, or their or any of their issue, and in such shares, manner, and proportions, as they the said [*husband*] and [*appointor*] the mother, during their joint lives, by any deed or writing under their hands and seals, to be by them executed in the presence of, and attested by two or more credible witnesses, and enrolled in the court rolls of the said manor (*a*), at one of the three next general courts to be holden for the same manor, after the decease of either of them the said [*husband*] or [*appointor*] his wife, should direct, nominate, or appoint: *And* for want of such direction, nomination, or appointment, or in default of the enrolment thereof as aforesaid, then to remain *To the use and behoof* of such child or children of the said intended marriage, or of their issue as aforesaid, and for such estate and estates, and with such limitations and remainders over, and under and subject to such provisoes, restrictions, and payments, to and amongst and for the benefit of all and every or any of such child or children, or any of their issue, and in such shares, manner, and proportions, as the survivor of them the said [*husband*] and [*appointor*] the mother, by any deed or writing, or by his or her last will or testament in writing, under his or her hand and seal, to be executed and attested as aforesaid, and enrolled at one of the three next general courts to be holden for the said manor, after the decease of such survivor, should direct, nominate, or appoint: *And* for want of such direction, nomination, or appointment, or in default of the enrolment thereof as *aforesaid, then to remain *To the use and behoof* of all and every the child and children of the said [*husband*] on the body of the said [*appointor*] the mother to be begotten, and his,

the marriage, or the issue of any such child or children, as husband and wife should, by deed to be enrolled in the court rolls of the manor, appoint;

And in default of such direction or enrolment,

to the use of such child, &c. as the survivor should appoint by deed or will, enrolled at one of the next general courts to be held for the manor after the death of the survivor.

And in default of such appointment or enrolment, to the use of the children in fee, as tenants in common; and in default of issue, to the

(*a*) The enrolment of the appointment in the court rolls of the manor should always be made requisite to a valid execution of a power over copyholds: for the title to copyhold lands should always appear on the court rolls, and not be dependent on any private deeds or agreements. *Vide ante*, Vol. 1, p. 563.

A power over copyholds should always require the appointment to be enrolled in the court rolls.

OF COPYHOLDS TO FIVE, IN FEE.

heirs of husband.

her, and their heirs, and if more than one, as tenants in common, according to the custom of the said manor: *And* in case there should be no child or children of the said intended marriage, or there being such, all and every the said child or children should die under the age of twenty-one years, and without issue, then to remain to the heirs of him the said [*husband*], according to the custom of the said manor.

Recital of husband's death, leaving appointor, his widow, and six children of the marriage; and that no joint appointment was made.

And whereas the said [*husband*] departed this life on or about the —— day of —— 18—, leaving the said [*appointor*], the mother, his widow, and six children of his marriage with her; *And* no appointment was made or executed during the lifetime of the said [*husband*], under the said power of appointment.

Recital that all the children are of age.

And whereas all the said children have attained their respective ages of twenty-one years.

Recital that eldest son is mentally imbecile, and that appointor intends to make a provision for him adapted to that state.

And whereas [ ] the eldest son of the said marriage is in a state of mental imbecility; and the said [*appointor*], the mother, intends to make that provision for her said eldest son, which she deems best adapted to the circumstances of his being in that state.

Recital of desire to execute power in favour of five younger children.

And whereas the said [*appointor*], the mother, is desirous, and hath determined to exercise the power given or limited to her by the said hereinbefore in part recited surrender, by appointing the copyhold hereditaments therein comprised unto the said [*five younger children*], their heirs and assigns for ever, as tenants in common, according to the custom of the said manor (*b*).

[*519] *Testatum.*

*Now this indenture witnesseth, that

(*b*) If there has been a previous appointment to three, omit the last recital, and add,

PREVIOUS APPOINTMENT.

Recital of a previous appointment by appointor to three of the children exclusively in fee.

"And whereas by a deed-poll or instrument in writing, under the hand and seal of the said [*appointor*], and duly executed by her in the presence of two credible witnesses, and attested by the same witnesses, and bearing date on or about the —— day of —— 18—, the said [*appointor*], the mother, *did*, in exercise of the power reserved to her in and by the said surrender, appoint that the said copyhold hereditaments should thenceforth be and enure *To the only proper use and behoof* of her said three children [*A.*], [*C.*], and [*D.*] exclusively, their heirs and assigns,

OF COPYHOLDS TO FIVE, IN FEE.

by virtue and in exercise and execution of the power or authority, powers and authorities, given, limited, or reserved to the said [*appointor*], the mother, by virtue or means of the said hereinbefore recited surrender, and now vested in her solely by survivorship; and in exercise and execution of all and every other power or powers, authority or authorities, enabling her the said [*appointor*], the mother, in that behalf, *She* the said [*appointor*], the mother, by this her deed or instrument in writing, under her hand and seal, *signed, sealed, and delivered, or executed by her in the presence of two credible witnesses, and to be attested by the same witnesses, by their severally subscribing their names at the foot of the memorandum of attestation, indorsed on these presents, as to the execution thereof, by

Appointment.

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for ever. And whereas the said five younger children of the said [*appointor*] by the said [*husband*] have represented to the said [*appointor*], their mother, that they hoped she would have provided for them by an appointment of the copyhold hereditaments comprised in the said surrender, to all the said five younger children, or in such manner as should give a provision to each of them. And whereas, at the instance and request of the said five younger children, and with the consent of the said [*A. B.*], [*C. B.*], the daughter, and [*D. B.*], as such former appointees, the said [*appointor*], the mother, hath consented to make the further appointment contained in these presents: And the said [*A. B.*], [*C. B.*], the daughter, and [*D. B.*], *have* consented, and *do* hereby consent, that the appointment, hereby made, shall be a valid and effectual appointment, as against them in equity, and also so far as circumstances and the said form of appointment will admit at law.†

Recital of the desire of the five younger children, that appointor would appoint the copyholds to all of them;

and that therefore, with the consent of the former appointees, appointor hath consented to make this appointment.

Consent of former appointees, that this appointment shall be valid.

If enrolment of an appointment of copyholds is to be made after the death of the appointor, and by consent of previous appointees only a second appointment be enrolled, it will supersede the first.

† As enrolment of the appointment in the copyhold court, after the death of the appointor, is requisite to a valid execution of the above recited power, if, by the agreement of the first appointees, only the second appointment be enrolled, it seems, therefore, that the second appointment will have the same effect as if a previous appointment had not been made. See *Digges's case*, 1 Co. 173 b. 3.

OF COPYHOLDS TO FIVE, IN FEE.

the said [*appointor*], the mother (*c*), *doth* direct, nominate, and appoint, that immediately after the execution of these presents (*subject* nevertheless, and without prejudice, to the estate for life of the said [*appointor*], the mother, therein,) ALL and singular the copyhold or customary messuages, lands, tenements, and hereditaments, comprised in the said surrender, and described in the recitals hereinbefore contained, and every part and parcel of the same, with the rights, members, and appurtenances, shall belong and remain to, and TO THE PROPER USE AND BEHOOF of the said [*A. B.*], [*C. B.*], the daughter and [*D. B.*], [*E. K.*], and [*F. B.*], their heirs and assigns for ever, as tenants in common, according to the custom of the said manor. IN WITNESS, &c.

(subject to appointor's life estate,) of parcels comprised in surrender.

to the use of the five younger children, in fee, as tenants in common, according to the custom.

With the consent of former appointees.

(*c*) If there has been a previous appointment, add, "and with the consent and approbation of the said [*A. B.*], [*C. B.*], the daughter, and [*D. B.*], testified by their severally executing these presents."

OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

APPOINTMENT *of* LEASEHOLDS FOR YEARS *by Husband and Wife, under an inclusive power in a Marriage Settlement, unto the Three Children of the Marriage, to take effect after the Death of the Survivor of the Parents,* IN SHARES, *so as not likely to be Illusory, viz. One Twentieth to one Child, One Twentieth to another Child, to vest on his coming of Age, but in case of his previous Decease, then to the other Child; and the remained Eighteen Twentieths, to the other Child; and* ASSIGNMENT *of the Term by the Administratrix, with the Will annexed, of the surviving Trustee and her Husband to Two* NEW TRUSTEES.

THIS INDENTURE, made the —— day of —— in in the year of our Lord 18—; BETWEEN [*assignor, hus-*

Parties.

OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

band of administratrix of surviving trustee] and [*married name*] his wife, formerly [*maiden name*], spinster, of the first part; *husband, joint appointor*], and [ ] his wife (whose maiden name was [*maiden name*], daughter of [*father*], late of, &c. esquire, deceased), of the second part; and [*two new trustees*], of, &c. of the third part. WHEREAS by indenture of lease, bearing date on or about the —— day of ——, 18—, and made between [*mortgagee*], esquire, of the first part, [*mortgagor*], of the second part, and [*lessee*], of the third part; for the considerations therein mentioned, the said [*mortgagee*] *did*, with the consent of the said [*mortgagor*], demise unto the said [*lessee*], *All that* piece or parcel of ground, &c. *To hold* the same unto the said [*lessee*], his executors, administrators, and assigns, from —— then last past, during the term of eighty-eight years and three quarters of a *year wanting twenty-one days, *At* the yearly rent of seven pounds; *And subject* to the several covenants and conditions therein expressed and contained on the part of the lessee, his executors, administrators, and assigns. AND WHEREAS by divers mesne assignments, and other acts good and effectual in the law, and ultimately by indenture, bearing date on or about the —— day of ——, 18—, and made between the said [*father*], deceased, of the first part, the said [*husband*] and [ ] his wife, of the second part, and [*trustee*] and [*other trustee*] of the third part, (being a settlement executed subsequently to the marriage of the said [*husband*] and [ ] his wife), *The said* piece or parcel of ground, &c. comprised in the said recited indenture of lease, were duly assigned to, and became vested in the said [*trustee*] and [*other trustee*], their executors, administrators, and assigns, for the then residue of the said term of eighty-eight years and three quarters of a year wanting twenty-one days therein, *Upon the trusts*, and for the intents and purposes thereinafter declared, and in part hereinafter mentioned; that is to say; *In trust* for the said [*wife, married name*], during the residue of the said term, if she should so long live: *And* to pay the rents and profits of the said premises (after deducting the ground rent and other outgoings in respect thereof) to her the said [*wife*], during such part of the said term as

Recital of lease of lands appointed.

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Recital, that by divers mesne assignments, the lands were vested in trustees of the marriage settlement containing the power to appoint,

in trust for the wife for life,

and for her separate use;

OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

she should live; or to permit her to receive the same, for her own proper use and benefit: the same not to be subject to the controul or engagements of the said [*husband*], or any other husband she might thereafter marry; but the receipt and receipts of the said [*wife*] and her assigns, from time to time, notwithstanding her coverture, to be a good and sufficient discharge to the said trustees, or the survivor of them, or the executors, administrators, or assigns of such survivor, for the payment thereof: *And* after the decease of the said [*wife*] (in case she should die in the lifetime of the said [*husband*], and during the continuance of the said term), then *In trust* for the said [*husband*], during the residue of the said term, if he should so long live: *And* after the death of the survivor of the said [*husband*] and [ ] his wife, in case they should both die during the continuance of the said term, *In trust* for *all and every the children (*a*), whether sons or daughters

remainder in trust for the husband for life;

remainder in trust for all the children, in such shares as husband and wife, or the sur-

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What words will not authorize an exclusive appointment.

(*a*) Under a power to appoint as above, or "to all and every the child and children," *Pocklington* v. *Bayne*, 1 Bro. C. C. 450, or "unto and among" the children of different persons, every one must have a share. *Malim* v. *Keighley*, 2 Ves. jun. 334, 533. So even a power of disposal "unto and among *such* children begotten between us, and in such proportion," as the wife shall appoint, compels a distribution amongst all the children; no child can be excluded. *Alexander* v. *Alexander*, 2 Ves. 640, [*Sed vide post*, p. 555.] And in a late case, *Kemp* v. *Kemp*, 5 Ves. 849, Lord Alvanley held, that a power to appoint "amongst the children as the donee shall think proper," did not authorize an exclusive appointment. He treated the word "amongst" as equivalent to "all and every," which words are mandatory, that each shall have a share. *Menzey* v. *Walker*, For. 72. [See also 2 Barn. & Ald. 124.] And in an early case, *Gibson* v. *Kinvin*, 1 Vern. 66, upon a gift to the wife "upon trust and confidence that she would not dispose thereof but for the benefit of her children," it was determined, that no child could be excluded. Sug. Pow. 482, 3rd ed.

[In a late case, power was given to *A.* to dispose of a certain fund "in such manner as she thinks fit, amongst *all or any one or more of* her children, if she should have any; and if she hath none, then amongst my present or future grandchildren or their respective issue, as she likes best." It was admitted that this was a power of selection as to the *children;* and the question was, whether the words in italics applied also to the *grandchildren*, so as to call for the same construction as to

of the said [*husband*] on the body of the said [ ] his *wife begotten or to be begotten, whether born in his life-

OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

vivor, shall appoint;

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them; the Court held, that the words did not extend to the grandchildren, and that *A.* was bound to give to each grandchild living *at her death*, a substantial share. *Garthwaite* v. *Robinson*, 2 Sim. 43.]

At law any share, however nominal or illusory, will satisfy the terms of the power. 1 Durnf. & East, 438, n. 5 Ves. 861. But in equity some share must be given which does not come within the meaning of an illusory appointment. What that share is, remains in some doubt, unless the criterion be fixed by the determination of Lord Alvanley, that where a party is, in default of appointment, to take a third share, a gift of a hundred and ninetieth share to him is illusory: it was here Sir Wm. Grant, the late Master of the Rolls, drew the line; so that any share, which, squared by this rule, would exceed that in amount, was not deemed illusory. Sug. Pow. 493, 3rd ed. But the old rule, which leaves a discretionary power in the judge, to be directed by the circumstances of each case, has been countenanced by Lord Eldon, though certainly with restrictions. The following is the result of the leading cases on this important subject. In *Wilson* v. *Piggot*, 2 Ves. jun. 356, the proportion given to one of four children amounted only to one sixteenth of the whole fund, and Lord Alvanley held it to be good, although it was one fourth less than an equal proportion. In *Alexander* v. *Alexander*, 2 Ves. sen. 640, the proportion given was only a sixtieth part of the fund to one of five children; but the point was not raised, because the child did not claim more. 9 Ves. 392. In *Kemp* v. *Kemp*, 5 Ves. 849, the fund amounted to nearly £1900. There were three objects: to one £50 was given, to another £10, and the residue to the other. The first therefore had only a thirty-eighth share, and the second only a one hundred and ninetieth share of the entire fund, when, upon an equal division, each would have been entitled to a third. Lord Alvanley, in delivering judgment, but lamenting that the Court did not follow the rule of law, said, that he was bound to say, the bequest of the £10 was clearly meant as an illusion, and not an execution. The discussion of this case turned, not upon the £50, but upon the £10. 12 Ves. 125. In *Butcher* v. *Butcher*, 9 Ves. 312, there were nine persons, and the fund amounted to about £17,000. To some of the children £200 3 per cents. only was given; so that, reckoning the stock at even 70 per cent. the share did not exceed a hundred and twenty-second part of the fund. The late Master of the Rolls, after expressing his opinion of the rule, said, "it is impossible not to feel the disposition of Lord Alvanley, as expressed in *Spencer* v. *Spencer*, (5 Ves. 368,) to get rid of it altogether. But I am not authorized to act upon that dis-

Under an inclusive power of appointment, the shares may be illusory at law, but they must not in equity.

What is an illusory appointment remains in some doubt.

The rule by which Sir Wm. Grant was directed as to the limit of an illusory appointment.

A statement of the result of the leading cases.

OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

time, or in due time after his decease, at such time and *times, and in such parts, shares, and proportions, and sub-

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position. I am bound to follow the precedents, as far as they have gone. But having no principle to guide me, I cannot go a step farther. As therefore no case has been found in which a sum of this amount has been declared illusory, there is no ground upon which I think myself justified in determining, that this is an invalid appointment." In *Bax* v. *Whitehead*, 10 Ves. 31, the fund was £2500 South Sea Annuities, and there were only two objects of the power; to one, £100 stock was given, and the residue to the other. The first therefore had only a twenty-fifth share; and the Master of the Rolls, referring to his former decision, held the appointment not illusory. In *Mocatta* v. *Lonsada*, 12 Ves. 123, the fund was £2500. There were five objects of the power. To some, the donee of the power gave only a share equal to about a seventy-fifth of the fund, it amounting to £33:6*s.* 8*d.* each, when upon an equal division they would have been entitled to £500 each. The Master of the Rolls said, that he adhered to the rule he laid down in *Butcher* v. *Butcher*, that he would go as far as he was bound by authority, and no farther. In *Dyke* v. *Sylvester*, 12 Ves. 126, the disproportion was still greater. The fund amounted to about £7100, and there were nine objects of the power, seven of whom had only about £71 a piece given to them. The point was given up in argument; and the Master of the Rolls thought that there was nothing in an objection taken that there might be more children; there was so little probability, under the circumstances, that the shares would ever be reduced below the standard, under which he had said he should consider himself bound by the authorities.

Lord Eldon's opinion,

On appeals to Lord Chancellor Eldon, in *Bax* v. *Whitbread*, 16 Ves. 15, and in *Butcher* v. *Butcher*, 1 Ves. & Bea. 79, against the decrees of the Master of the Rolls in those cases, the Lord Chancellor, in both instances, confirmed the decrees, the shares not being in his opinion illusory; but he expressed his dissatisfaction with the negative rule adopted by the Master of the Rolls, and appeared inclined to the old rule, which permits the Court to exercise a discretion, according to the peculiar circumstances attending each case. By which, according to the Master of the Rolls, "the Court keeps itself in a state of constant embarrassment, and those who have such powers to execute, in a perpetual uncertainty, without aiming at any object of the least importance." 9 Ves. 398. These difficulties are equally recognised by the Lord Chancellor; for in *Butcher* v. *Butcher*, 1 Ves. & Bea. 96, 97, he says, "having given to this subject the most deliberate attention, I find it in such a state of contradiction, both from *dicta* and decisions of great judges, that, if I had

ject to such conditions, restrictions, and limitations, as the * said [*husband*] and [ ] his wife, or the survivor of them, by any deed or deeds, with or without power of revocation, to be sealed and delivered by them in the presence of two or more credible witnesses, or by the last will and testament of such survivor, to be executed as therein mentioned, should give, direct, limit, or appoint; *And* for want of such appointment, *In trust* for all the children of the said marriage, equally, in manner therein mentioned. And it is by the said indenture provided and

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and for want of appointment, in trust for all the children equally.

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to advise, I could not say how such a power can be safely exercised. The doctrine is as loose as this; that, though a power is given, to be exercised according to discretion, as to the shares, yet, in effect, unless the judgment of the person, who was to exercise that power, agreed with the judgment of the judge, who had to decide upon the execution, it is impossible to know, whether the execution would or would not be good." *Vide post*, p. 531.

An illusory appointment may be excused by a provision in some other way.

If the person exercising the power, provides for an object of the power in some other way, that prevents the appointment from being illusory. *Bristow* v. *Warde*, 2 Ves. jun. 349. *Spencer* v. *Spencer*, 5 Ves. 368. *Kemp* v. *Kemp*, 5 Ves. 861. *Mocatta* v. *Lonsada*, 12 Ves. 124. In *Spencer* v. *Spencer*, 5 Ves. 368, Lord Alvanley said, "if one child is already provided for, I desire it not to be understood as my opinion, that in such a case the party would be bound to give that child any thing." See also 12 Ves. 124. In another case, his lordship inclined to think, that an otherwise illusory share might be excused, where there is an actual provision made, even where it does not move from the person executing the power. *Vandezec* v. *Aclom*, 4 Ves. 785. And this latter doctrine is countenanced by Lord Redesdale. *Lysaght* v. *Royls*, 2 Sch. & Lefr. 152; and see 16 Ves. 25; 1 Ves. & Bea. 95. But it is clear, that a provision made by the person creating the power would not have that effect. *Kemp* v. *Kemp*, 5 Ves. 861.

An illusory appointment may be of real as well as personal estate.

A power to appoint to children will not authorize an appointment to grandchildren.

The doctrine of illusory appointments extends to real as well as to personal estate. *Pocklington* v. *Bayne*, 1 Bro. C. C. 451; see 5 Ves. 861; 1 Ves. & Bea. 99. But the chief ground of the determination in *Pocklington* v. *Bayne*, seems to have been for an excess in the execution of the power, by appointing to grandchildren in remainder, and to trustees to preserve contingent remainders, when the power only authorized an appointment to children. See *Alexander* v. *Alexander*, 2 Ves. Sen. 640; *Brudenell* v. *Elwes*, 1 East, 442; 7 Ves. 382, S. C. As to what words will authorize an exclusive appointment, *vide post*, 554 (*a*).

OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

declared, that in case of the death of either of them the said [*trustee*] and [*other trustee*], during the lifetime of the said [*husband*] and [ ] his wife, it should be lawful for the said [*husband*] and [ ] his wife, and the survivor of them, by any deed or deeds in writing, to be executed in the presence of two or more credible witnesses, to appoint a new trustee or trustees in the room of him or them so dying: *And* that thereupon the surviving trustee should convey, assign, and set over the said piece or parcel of ground, &c. thereby assigned, or the money to arise or accrue from the sale thereof, or any part thereof, and the security or securities whereon the same should be invested, in such manner and form as should be thought most proper and effectual; *So* that the same might be effectually and absolutely vested in the surviving trustee, or such other person or persons so to be nominated and appointed as aforesaid, upon the trusts in the now reciting

[*527] *indenture mentioned and declared concerning the same respectively: *And* that when and so often as the then present or any succeeding trustee or trustees should die, then some other trustee or trustees should, from time to time, be appointed in the room or stead of such trustee or trustees so dying, *So* that there might be always two trustees for the time being, in whom the said trust premises might be effectually vested. AND WHEREAS by deed-poll, sealed and delivered by the said [*husband*] and [ ] his wife, in the presence of two credible witnesses, bearing date on or about the —— day of ——, 18—, and indorsed on the said recited indenture of —— day of ——, 18—, *After reciting*, that since the date and execution of the same indenture, the said [*two old trustees*] had both died; *And* that the said [*husband*] and [ ] his wife, were desirous of appointing the aforesaid [*two new trustees*], to be trustees, in the place of the said [*old trustees*]; *It is witnessed*, that the said [*husband*], and [ ] his wife, by virtue, and in pursuance and exercise of the power and authority to them reserved and given by the said recited indenture of the —— day of ——, 18—; and of all other powers enabling them thereto, *did* nominate, substitute, and appoint the said [*new trustees*], to be trustees, for the purposes in the

Recital of appointment of new trustees.

same indenture expressed, in the stead of the said [*old trustees*], to do and perform all acts, concerning the said trust premises. AND WHEREAS the said [*old trustee*], survived the said [*other old trustee*]; and afterwards departed this life, having duly made and published his last will and testament in writing, bearing date on or about the —— day of ——, 18—; but did not thereby appoint any person or persons executor or executors thereof: AND on or about the —— day of —— then next, administration with the will of the said [*surviving trustee*] annexed, was duly granted to the said [*wife of assignor, married name*], then [*maiden name*] (one of the daughters of the said [*surviving trustee*]), by the Prerogative Court of the Archbishop of Canterbury. AND WHEREAS there is issue of the said [*husband*], on the body of the said [ ] his wife begotten, three children, and no more; that is to say, [*first daughter*], the *wife of [ ], of, &c. gentleman, [*second daughter*], the wife of [ ], of, &c. esquire, and [*son*], which said [*first daughter, married name*] and [*second daughter, married name*], have respectively attained the age of twenty-one years; but the said [*son*], is now an infant of the age of nineteen years, or thereabouts. AND there being now no probability of the said [*wife, married name*], having any other issue by the said [*husband*], they the said [*husband*], and [ ] his wife, are desirous to appoint the said hereditaments and premises, comprised in the said recited indenture of lease, unto and among the said [*first daughter, married name*], [*second daughter, married name*], and [*son*], in the several shares and proportions, and in the manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that they, the said [*husband*] and [ ] his wife, in pursuance and in exercise, and execution of the power (*b*) or authority given, or reserved to them, in and by the said hereinbefore in part recited indenture, of the —— day of ——, 18—; and by force and virtue thereof, and of every

OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

Recital of representation to the last trustee.

Recital of there being three children of the marriage;

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and there being no probability of more, parents are desirous to appoint.

Testatum.

(*b*) As to the requisites to a well drawn appointment under a power, and the attestation of it, *vide ante*, p. 502.

OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

other power, right, and authority to them, or either of them, given or reserved, in them, or either of them vested, or in any wise enabling them, or either of them in this behalf, *have*, and each of them *hath* directed, limited, and appointed; *And* by this deed, sealed and delivered by them in the presence of two credible witnesses, *do*, and each of them *doth*, irrevocably direct, limit, and appoint, *That* the piece or parcel of ground, &c. and all and singular other the premises, hereinbefore described, and comprised in the said hereinbefore recited indenture of lease, of the —— day of ——, 17—, with their, and every of their appurtenances, shall, from and immediately after the decease of the survivor of the said [*husband*] and [ ] his wife, remain, continue, and be, during all the residue and remainder which shall from and after the decease of the survivor of the said [*husband*] and [ ] his wife, be to come and unexpired of the said term of eighty-eight years and three quarters of a year wanting *twenty-one days, unto and among the said [*first daughter, married name*], [*second daughter, married name*], and [*son*], in the shares and proportions following; that is to say, *As to, for, and concerning* one full undivided twentieth part or share, of and in the said piece or parcel of ground, &c. with the appurtenances, unto, and for the use and benefit of the said [*first daughter, married name*], her executors, administrators, and assigns. *And as to, for, and concerning* one other full undivided twentieth part or share, of and in the said piece or parcel of ground, &c. with the appurtenances, unto, and for the benefit of the said [*son*], his executors, administrators, and assigns; and to be an interest vested in him, at his age of twenty-one years: *But* in case the said [*son*] should depart this life under the age of twenty-one years, then, immediately after such his decease, to, and for the benefit of the said [*second daughter, married name*], her executors, administrators, and assigns. *And as to, for and concerning* the other, or remaining eighteen undivided twentieth parts of and in the said piece or parcel of ground, &c. with the appurtenances, unto and for the benefit of the said [*second daughter, married name*], her executors, administrators, and assigns. AND THIS IN-

Appointment of leasehold lands,

to take effect after the death of the survivor of parents,

for the then residue of the term,

[*529] in the following shares, viz. one twentieth to one child, one twentieth to another child, to vest on his coming of age;

but in case of his previous decease, then to the other child;

and the remaining eighteen twentieths to the other child.

Further Testatum.

OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

DENTURE FURTHER WITNESSETH, that in order that the legal estate of and in the said leasehold premises may be vested, for the residue of the said term of eighty-eight years and three quarters of a year wanting twenty-one days therein, in the said [*two new trustees*], the trustees appointed by the said deed-poll, of the —— day of ——, 18—, as aforesaid, upon the trusts affecting the same, by virtue of the said recited indenture of the —— day of ——, 18—, and by virtue of these presents; *And* in consideration of the sum of ten shillings of lawful money of Great Britain to the said [*assignor*], and [ ] his wife, in hand paid by the said [*two trustees*], at or before the sealing and delivery of these presents; the receipt whereof is hereby acknowledged; *They* the said [*assignor*], and [ ] his wife, at the request, and by the direction of the said [*husband*], and [ ] his wife, (testified by their severally sealing and delivering these presents,) *have*, and each of them *hath* *bargained, sold, assigned, [*530] transferred, and set over; *And* by these presents *do*, and each of them *doth* bargain, sell, assign, transfer, and set over, unto the said [*new trustees*], their executors, administrators, and assigns, ALL THAT the said piece or parcel of ground, &c. and all and singular other the premises hereinbefore described, and which in and by the said recited indenture of the —— day of ——, 18—, were assigned, or expressed to be assigned, unto the said [*old trustees*], their executors, administrators, and assigns, with their, and every of their rights, members, and appurtenances. AND all the estate, right, title, interest, term, and terms for years yet to come and unexpired, property, possession, benefit, claim, and demand whatsoever, of them the said [*assignor*], and [ ] his wife, or either of them, in, to, or out of the said piece or parcel of ground, &c. and every part thereof. TO HAVE AND TO HOLD the said piece or parcel of ground, &c. and all and singular other the premises hereinbefore expressed to be hereby assigned, with their appurtenances, unto the said [*new trustees*], their executors, administrators, and assigns, henceforth, for and during all the residue and remainder now to come and unexpired of the said term of eighty-eight years and three-quarters of a year wanting twenty-

Assignment by the representative of a surviving trustee to two new trustees.

Parcels.

All the estate.

Habendum for residue of term.

OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

one days; *Subject nevertheless* to the payment of the rent, and observance and performance of the several covenants and conditions in and by the said recited indenture of lease of the —— day of ——, 18—, reserved, mentioned, and contained, on the part of the lessee therein named, his executors, administrators, and assigns, to be paid, observed, kept, and performed. AND *it is hereby agreed and declared*, between and by the said parties to these presents, that the said [*new trustees*], their executors, administrators, and assigns, shall henceforth stand and be possessed of the said piece or parcel of ground, &c. and all and singular other the premises hereinbefore described, and expressed or intended to be hereby assigned, with their appurtenances, *Upon* and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations, as the same premises are now subject to, under or by virtue of the [*531] said recited indenture of the —— day of ——, *18—, and of these presents. AND THE SAID [*assignor*], doth hereby for himself, his heirs, executors, and administrators, covenant and declare with and to the said [*new trustees*], their executors, administrators, and assigns, that they the said [*assignor*] and [ ] his wife, have not, nor hath either of them, at any time heretofore, made, done, executed, committed, or willingly or knowingly permitted or suffered any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, the piece or parcel of ground, &c. and premises expressed to be hereby assigned, or any part thereof, or the said term of eighty-eight years and three-quarters of a year wanting ten days therein, are, is, can, shall, or may be impeached, charged, assigned, surrendered, or in any wise incumbered. IN WITNESS, &c.

subject to the rent and covenants of lease.

Declaration that trustees shall be possessed of premises upon the trusts of the settlement.

Covenant by husband, that he and wife have not incumbered,

The very learned gentleman who drew the above deed, made on it the following observations, caused by the doubts and difficulties in which the doctrine of illusory appointments is at present involved. *Vide etiam ante*, p. 523, 525.

Observations of an eminent conveyancing counsel on the sub-

"If Mr. *G.* has advanced Mrs. *K.* and his son *J.*, then the smallness of the share of the leasehold estate, to be appointed to Mrs. *K.* and Mr. *J. G.* will not vitiate the appointment; but if they have not been

substantially advanced, then the shares now to be appointed must not be illusory. What proportion of the trust fund would amount to an illusory share, it is difficult to determine. In the case of *Bax* v. *Whitehead*, 10 Vesey, 31, the Master of the Rolls held, that one twenty-fifth part of a trust fund was not an illusory share; but upon an appeal, 16 Vesey, 15, the Lord Chancellor seems to have disapproved of his Honour's determination in former cases; the principle of which determination seems to have been, to ascertain some precise proportion, which might be considered as the standard of an illusory share."

OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

ject of illusory appointment.

"23d November, 1810."

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APPOINTMENT *by a Father and Son, where Lands were limited to such Uses as they should jointly appoint; with Remainders over, that in case of the Son's Death, and a Failure of his Issue Male in the Father's Life-time, the Lands shall (subject to any Joint Appointment made or to be made by them) be, from the Son's Death and Failure of his Issue Male,* TO SUCH USES *as the Father surviving the Son shall appoint* (*a*)

BY TWO, ON A CONTINGENCY, TO SUCH USES AS ONE SHALL APPOINT.

TO ALL TO WHOM THESE PRESENTS SHALL COME, The Most Noble *G.* Marquis of *P.* and Earl of *H.* in the

Exordium.

(*a*) On a point similar to the above, Mr. Sugden well observes, "in a preceding page I put the case of an estate being conveyed to such uses as *A.* shall appoint, and of his desire to convey the estate as *B.* shall appoint. Perhaps there is no conveyancer to whom, in the early part of his professional life, a doubt has not presented itself in regard to the validity of such an appointment. Two objections have been made to it, which have come within my observation: the one, that it is contrary to a known principle, that a power cannot be delegated, and the other, that it is a new attempt at a perpetuity. But these objections are easily answered. As to the first, the rule that a power cannot be delegated, is not a general inflexible rule, but is simply a regulation,

A person having a power to appoint to uses may appoint to such uses as another person shall appoint, which uses will take effect out of the original seisin.

BY TWO, ON A CONTINGENCY, TO SUCH USES AS ONE SHALL APPOINT.

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kingdom of Ireland, Knight of the most noble Order of *the Garter, *And* the Right Honourable *C. K.*, commonly called Earl of *B.*, eldest son of the said *G.* Marquis of *P.*, *send greeting.* WHEREAS by virtue of a certain indenture of bargain and sale, bearing date on or about the —— day of ——, 17—, and made, or expressed to be made, between [ ], of, &c. and [ ], of, &c. of the first part; the said *G.* Marquis of *P.* of second part; the said Earl of *B.* of third part; [*tenant*], of, &c. of fourth part; and [*demandant*], of, &c. of the fifth part; and inrolled in his Majesty's High Court of Chancery; and a common recovery suffered in his Majesty's Court of Common Pleas, at Westminster, in —— term, in the —— year of the reign of his present (*or* late) Majesty King George the ——, wherein the said [*demandant*] was demandant, the said [*tenant*], tenant, and the said Earl of *B.* first vouchee, who vouched to warranty the common vouchee of said Court of Common Pleas, *All those*, &c. were (*subject* to certain charges mentioned in the same indenture of bargain and sale,) limited and assured *To the use* of the said *G.* Marquis of *P.*, and his assigns for life; remainder *To the use* of such person and persons, and for such estate and estates, interest and interests, and subject to such annuities and charges, either annual or in gross, and such powers, conditions, and limitations over, and in such manner and form, either absolutely or conditionally, and with or without power of revocation and new limitation of use or uses, as they the said *G.* Marquis of *P.*, and Earl of *B.* during their joint lives should, by any deed or deeds, writing or writings, to be by them both sealed and delivered in the presence of two or more credible wit-

Recital of a bargain and sale inrolled, and a common recovery, whereby lands were limited.

To the use of the father for life;

remainder to such uses as father and son should jointly appoint;

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that a *confidence* reposed in one, cannot by him be delegated to another. This rule, therefore, is inapplicable to the case before us; for no *confidence* was reposed in *A.*, but the estate was, merely for his own convenience, conveyed to such uses generally as he should appoint. In regard to the second objection, the limitation has no greater tendency to a perpetuity than a simple conveyance in fee. Under the power in question the donee may tie up the estate for exactly the same period, but not longer, than he could were he seised in fee." Sug. Pow. 199, 3d edit.

nesses, from time to time jointly direct, limit, appoint or declare: *And* in default of such direction, limitation, or appointment, and as to such part and parts of said hereditaments and premises, and of such estate or interest therein as should not pass by any such joint direction, limitation, or appointment, or should not remain subject thereto, then *as the said Earl of *B.* in case he should survive the said *G.* Marquis of *P.* should after the decease of said *G.* Marquis of *P.*, by any deed or deeds, writing or writings, to be by him the said Earl of *B.* sealed and delivered in the presence of two or more credible witnesses, or by his last will and testament in writing, or any writing purporting to be or in the nature of his last will and testament, or any codicil or codicils thereto, to be signed, published, and declared by him as such, in the presence of three or more credible persons, direct, limit, or appoint: *And* in default of such direction, limitation or appointment, or in case any such should be made, when and as soon as the estates and interests thereby limited should respectively end and determine, and as to such part or parts of the hereditaments and premises whereof no such direction, limitation, or appointment should be made; and in the mean time and until such direction, limitation, or appointment should be made, and subject thereto, *To the use* of said Earl of B. and the heirs male of his body; remainder *To the use* of the Honourable *F. K.* commonly called Lord *F. K.* younger son of said *G.* Marquis of *P.* and the heirs male of his body; remainder *To the use* of the said Marquis of *P.* and Earl of *B.* their heirs and assigns for ever. And whereas the said Marquis of *P.* hath requested the said Earl of *B.* to join in appointing the said manor or lordship, advowsons, messuages, cottages, mills, farms, lands, tenements, tithes, rents, hereditaments, and premises, comprised in the said in part recited indenture of bargain and sale of the —— day of ——, 18—, and the said common recovery, so that in case the said Earl of *B.* should happen to depart this life without leaving issue male, or leaving issue male, and such issue should fail during the lifetime of him the said Marquis of *P.*, he the said Marquis of *P.* may be enabled to dispose of or settle the

BY TWO, ON A CONTINGENCY, TO SUCH USES AS ONE SHALL APPOINT.

and in default of such joint appointment,

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then as the son should, after his father's decease, by deed or will appoint;

and in default of such appointment,

to the use of the son in tail male;

remainder to the use of his brother in tail male;

remainder to the use of the father and son in fee.

Recital of father's request, that son would join in appointing the lands, so that in case of son's death, and failure of his issue male in father's lifetime, he might be enabled to dispose of the lands:

BY TWO, ON A CONTINGENCY, TO SUCH USES AS ONE SHALL APPOINT.

said manor or lordship, advowsons, messuages, cottages, mills, farms, lands, tenements, tithes, rents, hereditaments, and premises, in such manner as he shall think fit, subject to such appointment or appointments as have been or may be made thereof by the said Marquis of *P.* and Earl of *B.* jointly, during their joint lives, whereto the said *Earl of *B.* hath consented and agreed. NOW THESE PRESENTS WITNESS, that in pursuance of the said agreement, and for effectuating the purposes aforesaid, *The* said Marquis of *P.* and Earl of *B.* in pursuance and in exercise of the power and authority them enabling, in such manner as in the said in part recited indenture of bargain and sale is mentioned, and by virtue of all and every other the power and powers, authority and authorities, to them belonging or appertaining, or them enabling in this behalf, *have*, and each of them *hath*, directed, limited, appointed, and declared, *And* by these presents, by them sealed and delivered in the presence of the two credible persons, whose names are intended to be hereupon indorsed as witnesses attesting the execution thereof, *do*, and each of them *doth*, direct, limit, appoint, and declare, *That* in case the said Earl of *B.* should depart this life without issue male, or leaving issue male and such issue should fail during the lifetime of the said Marquis of *P.*, ALL and singular the said manor or lordship, advowsons, messuages, cottages, mills, farms, lands, tenements, tithes, rents, hereditaments, and premises comprised in the said indenture of bargain and sale, and common recovery, shall (*Subject* to any appointment or appointments which hath or have been, or may hereafter be made thereof, or any part thereof, by the said Marquis of *P.* and Earl of *B.* under and by virtue of the power to them for that purpose given by the said in part recited indenture of bargain and sale of the —— day of ——, 18—,) go, remain, continue, and be: *And* that the same indenture of bargain and sale, and the said common recovery, and all other conveyances and assurances thereof, shall be and enure; *And* that the recoveror, in the said recovery named, and his heirs, shall stand and be seised of the same manor or lordship, advowsons, messuages, cottages, mills, farms, lands, tenements, tithes, rents, hereditaments, and premises, from and after

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Testatum.

Appointment of father and son,

that in case of son's death, and a failure of his issue male in father's lifetime,

parcels

shall (subject to any joint appointment made, or to be made by them) be,

from son's death, and

BY TWO, ON A CONTINGENCY, TO SUCH USES AS ONE SHALL APPOINT.

the decease of the said Earl of *B.* and failure of his issue male, in the lifetime of the said *G.* Marquis of *P.* To THE USE of such person and persons, and for such estate and estates, or for such intents and purposes, and with, under, and subject to such powers, provisoes, limitations, and *conditions, and charged and chargeable with such sum and sums of money, either annual or in gross, as the said *G.* Marquis of *P.* surviving the said Earl of *B.*, shall from time to time, by any deed or deeds, writing or writings, to be by him sealed and delivered in the presence of, and attested by two or more credible witnesses, and with or without power of revocation, limit, direct, or appoint; *And* that in default of, and in the mean time, and until such direction, limitation, or appointment, and in case any such should be made, when and as the estates thereby to be limited shall respectively end and determine, and as to such parts of the said premises of which there shall be no such direction, limitation, or appointment, To such and the same uses, upon such and the same trusts, and for such and the same intents and purposes, as are mentioned, expressed, and declared of and concerning the said manor or lordship, advowsons, &c. hereditaments, and premises, in and by the said in part recited indenture of bargain and sale. IN WITNESS whereof, they the said *G.* Marquis of *P.* and Earl of *B.* have hereunto set their hands and seals the —— day of ——, &c. *ut ante*, p. 507.

failure of his issue male,

to such uses as father, surviving son, shall by deed appoint:

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and in default of such appointment,

to the uses declared in the bargain and sale.

Testimonium.

AND AUTHORITY TO TRUSTEE TO RAISE PORTION.

*APPOINTMENT *by a Father of a Portion for a Daughter, under a Power in his Marriage Settlement, either where there has or has not been a previous Appointment: with an* AUTHORITY *to the surviving Trustee of the Term,* TO RAISE THE PORTION *by Mortgage forthwith: and* PROVISO *that the Appointment is not to prevent a further Appointment being made to the Daughter: or to preclude her from taking any share of the Residue, save only, that she shall not in any Event, unless by Appointment, take more than with the sum appointed she would have been entitled to, if no Appointment had been made: adapted to the Circumstances of the Sum appointed, being either smaller or greater than the distributive Share in Default of Appointment; and either where there is or is not an Infant who might not gain a vested Interest in the distributive Share in Default of Appointment.*

Recital of the marriage settlement of the appointor, whereby,

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*appointor*], of, &c. esquire, *sendeth greeting.* WHEREAS by indentures of lease and release, bearing date respectively on or about the —— and —— days of ——, 18—, the release being made, or expressed to be made, between the said [*appointor*], of the first part; [*intended wife*], of, &c. spinster, of the second part; [*releasee*], of, &c. esquire, and [*other releasee*], of, &c. esquire, of the third part; and [*trustee in term*], of, &c. esquire, since deceased, and [*other trustee of term*], &c. esquire, of the fourth part (being the settlement made
[*537] *previously to, and in contemplation of the marriage then intended, and soon afterwards had, between the said

[*appointor*] and [*wife, maiden name*]; *The* manor of, &c. in the said county of ——, with divers messuages, &c. in the said county of ——, therein particularly described, with their, and every of their rights, members, and appurtenances, were duly conveyed, settled, and assured, from and after the solemnization of the said then intended marriage, *To the use* of the said [*appointor*], and his assigns, for his life, without impeachment of waste, with remainder *To the use* of the said [*releasees*] and their heirs, during the life of the said [*appointor*], *Upon trust* to preserve the contingent uses thereinafter limited; with remainder *To the use* and intent, that the said [*wife, maiden name*], might, after the decease of the said [*appointor*], (in case she should survive him), receive and take during her life, out of the said manor and other hereditaments, one clear yearly rent-charge or sum of —— hundred pounds, for her jointure, and in bar of dower, with the usual powers and remedies for recovering the same; and subject thereto, *To the use* of the said [*trustees of term*], their executors, administrators, and assigns, for the terms of two hundred years, *Upon the trusts* therein, and hereinafter mentioned; with remainder *To the use* of the first and other sons of the said [*appointor*], by the said [*wife, maiden name*], successively, in tail male; with remainder *To the use* of the said [*appointor*], his heirs and assigns for ever. AND *it was thereby declared and agreed*, that the said term of two hundred years was limited to the said [*trustees of term*], their executors, administrators, and assigns, as aforesaid, *Upon trust*, in case there should be one or more child or children of the said [*appointor*], by the said [*wife, maiden name*] (besides an eldest or only son) that they the said [*trustees of term*], their executors, administrators, and assigns, should either in the lifetime of the said [*appointor*], with his consent, or else not till after his decease, by demise, sale, or mortgage of the manor, &c. comprised in the said term of two hundred years, or a competent part thereof; or by such other ways or means as they, or the survivor of them, or * the executors or administrators of such survivor, should think fit, raise and levy such sum and sums of money for

AND AUTHORITY TO TRUSTEE TO RAISE PORTION.

lands were limited.

to the use of the appointor for life;

remainder to the use of trustees to preserve contingent remainders.

remainder to the use that wife might receive a jointure;

remainder to the use of trustees for a term of 200 years;

remainder to the use of the first and other sons;

remainder to the use of the appointor in fee.

Recital that the term was limited upon trust, in case there should be one child besides an eldest son, to raise —— pounds; if two, —— pounds; if more, —— pounds; either in the life of the appointor, with his consent, or otherwise after his decease,

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AND AUTHORITY TO TRUSTEE TO RAISE PORTION.

to be divided amongst them in such proportions as appointor should by deed or will appoint:

the portion and portions of all and every such child and children (not being an eldest or only son as aforesaid) as therein, and hereinafter mentioned: that is to say; if but one such child, the sum of —— thousand pounds; and if two such children, the sum of —— thousand pounds; and if three or more, the sum of —— thousand pounds, to be shared and divided between or amongst them in such parts and proportions as he the said [*appointor*] should, by any deed or writing, or by his last will and testament, in writing, by him duly executed and attested, in the presence of two or more credible witnesses, give, direct, limit, or appoint the same: *And* for want of such gift, direction, limitation, or appointment, then the said sum of —— thousand pounds and —— thousand pounds so to be raised as aforesaid, (as the case might happen), to be equally divided between them, share and share alike: the portion and portions of such child or children to be paid in manner following; that is to say; To such of them as should be a son or sons, at the age of twenty-one years, and to such of them as should be a daughter or daughters, at the age of twenty-one years, or day of marriage, which should first happen, if such respective times of payment should happen after the decease of the said [*appointor*]; But if in his lifetime, then within three months after his decease, and not sooner, unless with his free consent. And *it was thereby provided*, that in case any such child or children should die, before his, her, or their portion or portions should become payable as aforesaid, then the portion or portions of such child or children should go and be paid unto, and be equally divided among the survivor or survivors of them, share and share alike, as and when the original portion or portions of such surviving child or children should become payable. And WHEREAS the said [*appointor*], hath had issue by the said [*wife, maiden name*], now his wife, three sons, and three daughters: that is to say; [ ], his eldest son, who attained the age of twenty-one years, and is since deceased: [ ] who died an infant; [ ], the younger, now of the age *of thirty years, or thereabout, [*appointee*], who hath attained the age of twenty-one years,

in default of appointment, portions to be equally divided,

and paid to sons at twenty-one, to daughters at twenty-one or marriage; but if in the lifetime of appointor, with his consent.

Recital of clause of survivorship:

and that appointor and his wife have had issue three sons and three daughters, of whom two sons are dead, one after attaining twenty-one, the other an infant.

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and [ ] and [ ], both yet infants (*a*). And whereas a marriage is intended to be shortly had and solemnized between the said [*appointee*] and [*intended husband*], of, &c. esquire: And upon the treaty for such marriage, it was, among other things, proposed and agreed, that the said [*appointor*], the elder, should, previously to the solemnization of the said intended marriage, in pursuance of the power in that behalf contained in the said hereinbefore recited indenture of release and settlement, appoint the sum of —— thousand pounds (*b*), part of the sum of —— * thousand pounds thereby provided, and directed to be raised for the portions of his daughters and younger sons (if three or more) as aforesaid, unto the said [*appointee*] absolutely, as and for her marriage portion or fortune;

AND AUTHORITY TO TRUSTEE TO RAISE PORTION.

Recital of intended marriage of appointee; and that previous thereto, father agreed to appoint —— pounds to her absolutely.

as her portion, and to be paid on the marriage, for the benefit of the intended husband.

[*541]

(*a*) If there has been a previous appointment to another child, who is married, say,

PREVIOUS APPOINTMENT TO ANOTHER CHILD.

Recital of appointment of a portion for another daughter.

"[*former appointee*], who hath attained the age of twenty-one years, and is now the wife of [ ], esquire, [*appointee*], who hath attained the age of twenty-one years, and [*infant*], now an infant of the age of —— years, or thereabouts. And whereas by a deed poll, or instrument in writing, under the hand and seal of the said [*appointor*], bearing date on or about the —— day of ——, 18—, he the said [*appointor*], in pursuance of the power reserved to him in and by the said marriage settlement, appointed the sum of —— thousand pounds, part of the said sum of —— thousand pounds thereby provided and directed to be raised for the portions of his daughters and younger sons (if three or more) as aforesaid, unto the said [*former appointee, married name*], then [*maiden name*], as and for her marriage portion or fortune, in case her then intended marriage with the said [*intended husband*] should take effect: *And* directed the same to be raised and paid immediately upon the solemnization thereof; which said sum of —— thousand pounds was accordingly afterwards raised by a mortgage of part of the estates comprised in the said settlement, and paid to the said [*intended husband*]."

(*b*) If there has been a previous appointment, say, here and in the other similar instances,

PREVIOUS APPOINTMENT.

"further part of," &c. *ut supra*.

AND AUTHORITY TO TRUSTEE TO RAISE PORTION.

and should direct the same to be raised and paid immediately upon the solemnization of the said intended marriage, to the intent that he the said [*intended husband*], her intended husband, might become entitled thereto in her right, and have and receive the same to and for his own use and benefit. NOW KNOW YE, that in pursuance and performance of the agreement of the said [*appointor*], the elder, in that behalf made upon the treaty for the marriage of the said [*appointee*], his daughter, with the said [*intended husband*] as aforesaid; and in pursuance and exercise (*c*) of the power and authority in that behalf to him given and reserved, in and by the said hereinbefore recited indenture of release and settlement as aforesaid, *He* the said [*appointor*], the elder, *hath* given, directed, limited, and appointed, *And* by this present deed or writing, by him duly executed in the presence of two credible witnesses, *doth* give, direct, limit, and appoint the sum of —— thousand pounds (*d*), part of the said sum of —— thousand pounds, in and by the same indenture of release and settlement provided and directed to be raised for the portions of his daughters and younger sons, (if three or more, as aforesaid,) unto the said [*appointee*], her executors, administrators, and assigns, as and for her marriage portion or fortune, in case the said intended marriage should take effect. AND the said [*appointor*], the elder, doth hereby authorize and direct the said [*trustee*], the surviving trustee of the said term of two hundred years, created by the said indenture of release and settlement, and his executors, administrators, or assigns, forthwith, or as soon as may be after the solemnization of the said intended marriage, to raise the said sum of —— thousand pounds hereby appointed as *aforesaid, by a mortgage of a competent part of the estates comprised in the said indenture of release and settlement, and to pay the same to the person or persons who shall be entitled thereto, by virtue of the appointment hereby made as aforesaid. PROVIDED ALWAYS *nevertheless*, and the said [*appointor*] the elder doth hereby declare, that

Testatum.

Appointment of the portion, in case the marriage should take effect.

Authority to the surviving trustee of the term, to raise the portion by mortgage forthwith.

[*542]

Proviso, that appointment is not to prevent a

(*c*) As to the requisities to a well drawn appointment under a power, *vide ante*, p. 502.

(*d*) As to exclusive and illusory appointments, *vide ante*, p. 523.

the gift and appointment hereby made as aforesaid, is not meant or intended by him to prevent or preclude him from hereafter giving or appointing any part or share of the residue of the said sum of —— thousand pounds, to her the said [*appointee*], in case he should think proper so to do, or to prevent or preclude her from hereafter having or taking under and by virtue of the trusts of the said settlement (*e*), any part or share of the residue of the said sum of —— thousand pounds, in case he the said [*appointor*] should not hereafter make any appointment of or concerning the same, or from having or taking (*f*) any part or share of so much of the said residue as shall or may ultimately remain unappointed by him the said [*appointor*] the elder: *Save only and except* that the said [*appointee*] shall not in (*g*) any event hereafter, unless by the appointment of the said [*appointor*] the elder, have or take any further or greater part of the said residue of the said sum of —— thousand pounds, than will, with the said sum of —— thousand pounds hereby given and appointed to her as aforesaid, make up what would (*h*) have been the full * part or share of her the said [*appointee*], under and by virtue of the trusts of the said settlement of and in the said sum of —— thousand pounds, in case he the said [*appointor*] had not made any appointment whatsoever of or concerning the same, or any part thereof (*i*). In witness, &c. *ut ante*, p. 507.

AND AUTHORITY TO TRUSTEE TO RAISE PORTION.

further appointment being made to appointee, or to preclude her from taking any share of the residue, in case no future appointment be made;

or from taking any share which may ultimately remain unappointed;

Save only that appointee shall not in any event, unless by appointment, take more than with the sum appointed she would have been entitled to, if no appointment had been made.

[*543]

(*e*) If the sum appointed be larger than the appointee's distributive share would have been, in case there had been no appointment; say 2000*l.* there being, for instance, 5000*l.* and three objects, one of them not having gained a vested interest in her share in default of appointment, then, provided it be the intention of the appointor, add,

LARGER APPOINTMENT THAN A DISTRIBUTIVE SHARE, WHERE THERE IS AN INFANT.

"in the event of the death of her sister, the aforesaid [*infant*], without having acquired a vested interest therein, any part," &c. *ut supra.*

(*f*) "in the same event, any part," &c. *ut supra.*

(*g*) "such event, except by," &c. *ut supra.*

(*h*) "in the same event have been," &c. *ut supra.*

(*i*) If the appointment be larger than the distributive share in default

LARGER

AND AUTHORITY TO TRUSTEE TO RAISE PORTION.

of appointment, and there is an infant, provided it be the intention, add,

APPOINTMENT THAN DISTRIBUTIVE SHARE.

In case infant acquires a vested interest, appointee not to take any share of the residue in default of appointment.

"*But* in the event of the said [*infant's*] living to acquire a vested interest in the said residue of the said sum of —— thousand pounds, subject to her said father's power of appointment, the said [*appointee*] is not to have or take any part or share of the said residue, in case the said [*father*] should not make any appointment of or concerning the same, or to have or take any part or share of so much of the said residue as shall or may ultimately remain unappointed by him."

[544]

OF MONEY BY A WIFE TO HER HUSBAND, AND RELEASE BY THREE TO TRUSTEES.

APPOINTMENT *under Power in a Settlement by a married Woman to her Husband, of One Third of the Money arising from the Sale of Shipping and Fire Shares: and* RELEASE *by the Husband for himself and his Wife, and by two other Persons entitled to the Remaining Two Thirds, to the surviving Trustee, and the Representatives of the deceased Trustee, of all Demands in relation to the Trusts declared by the Settlement.*

Parties.

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—; BETWEEN [*appointor, married name*], the wife of [*husband*], of, &c. (late [*maiden name*], spinster) of the first part; the said [*husband*], of the second part; [*son*], of, &c. gentleman, of the third part; [*daughter*], of, &c. spinster, of the fourth part; and [*trustee*], of, &c. of the fifth part. WHEREAS by indenture bearing date on or about the —— day of ——, 17—, and made between [*father of the person beneficially interested*], of, &c. of the one part, and [*deceased trustee*], and the said [*trustee*], both of, &c. of the other part; *After reciting* that the said [*father*], on the death

Recital of a settlement of sixteen shipping shares, and sixteen fire shares, in the London Assurance.

of [ ] his late wife, deceased, became entitled to sixteen shipping shares, and sixteen fire shares, of and in the Corporation of the London Assurance of houses and goods from fire: *And also reciting*, that the said [*father*], had issue by the said [ ] his said wife, three children, that is to say; the said [*appointor*], then and now the wife of the said [*husband*], and the said [*son*], and [*daughter*]; *And also reciting* that it had been agreed, that the said several shares, and all benefit thereof, should be assigned to the said [*trustees*], upon the *trusts, and to and for the intents and purposes thereinafter expressed concerning the same; *And* that the said several shares had been accordingly transferred into, and were then standing in the names of the said [*trustees*], in the respective books, kept for the transfer of the said shares; *It was witnessed*, agreed, and declared that they the said [*trustees*] their executors and administrators, should stand possessed of the said several shipping and fire shares, funds, and securities so standing in their names as aforesaid, and of and in the dividends, benefit, and advantage thereof, *Upon* the several trusts following, that is to say, *In trust* to pay to or authorize and empower the said [*father*], or his assigns, to receive and take the dividends and produce thereof to his and their own use, during his life: *And* from and immediately after his decease, *In trust* as to one undivided third part of the said shipping and fire shares, and the dividends, benefit, and advantage thereof, for such person or persons, and in such shares and proportions, manner, and form, as the said [*appointor*] alone, notwithstanding her coverture (*a*), should by any deed or deeds, writing or writings, with or without power of revocation, to be by her sealed and delivered in the presence of and attested by two or more credible witnesses; or by her last will and testament in writing, or any writing purporting to be, or in the nature of her last will and testament, to be by her executed, and attested in like manner, direct or appoint; *So* as such direction or appointment were made after the decease of the said [*father*]: *And* as to one other third part or share of the

OF MONEY BY A WIFE TO HER HUSBAND, AND RELEASE BY THREE TO TRUSTEES.

[*545]

transferred to two trustees,

in trust, to pay to or empower the father to receive the dividends for his life;

and after his decease, in trust as to one third part as appointor, notwithstanding coverture, should appoint;

as to another

(*a*) As to an appointment by a married woman, *vide ante*, p. 509 (*c*).

OF MONEY BY A WIFE TO HER HUSBAND, AND RELEASE BY THREE TO TRUSTEES.

said shipping and fire shares, from and after the decease of the said [*father*], in trust for the said [*son*], in case he should be then living: *And* as to the remaining third part or share of the said shipping and fire shares, from and after the decease of the said [*father*], *In trust* for the said [*daughter*], in case she should be then living. AND WHEREAS the said [*deceased trustee*] died in or about the month of ——, 18—, leaving the said [*trustee*], his co-trustee, in whom the said shipping shares and fire shares became thereupon vested by survivorship; *AND WHEREAS the said [*father*] died on or about the —— day of ——, last past. AND WHEREAS the said [*appointor*], the wife of the said [*husband*], hath declared her intention to make an absolute appointment of her one third part of the said shipping and fire shares comprised in the said recited indenture of the —— day of ——, 17—, (in exercise of the power thereby vested in her) to the said [*husband*], her husband, his executors, administrators, and assigns, in the manner hereinafter mentioned. AND WHEREAS the said [*trustee*], on the faith of the said intended appointment being made by her the said [*appointor*], hath this day, at the instance and request of the said [*husband*], and [*appointor*] his wife, [*son*], and [*daughter*], respectively, sold and disposed of the said shipping and fire shares, so vested in him, upon the trusts of the said indenture of the —— day of ——, 17—, as aforesaid; and the same produced (after paying all incidental expenses) the clear sum of [*ninety*] pounds: which thereupon became divisible in equal third parts, between the said [*husband*], [*son*], and [*daughter*]; *And* accordingly he the said [*trustee*] hath, at or immediately before the sealing and delivery of these presents, paid the clear sum of [*thirty*] pounds, one equal third part of the clear sum of [*ninety*] pounds, to the said [*husband*], (on the appointment and by the express direction of the said [*appointor*], his wife;) *And* hath at the same time paid the sum of [*thirty*] pounds, and [*thirty*] pounds, the two remaining third parts of the said sum of [*ninety*] pounds, to the said [*son*] and [*daughter*], respectively; in consideration of which payments, they the said [*husband*], [*son*], and [*daughter*], have agreed to join in releasing

third in trust for son, if then living.

and as to remaining third, in trust for daughter, if then living.

Recital of the death of one of the trustees.

Recital of the father's death.

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Recital of appointor's declaration to make an appointment of her third to her husband.

Recital that trustee, at the request of the parties, hath sold the shares;

and paid them the produce.

the said [*trustee*], in the manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited intention of the said [*appointor*], and in order to complete the title of the said [*husband*], to the said sum of [*thirty*] pounds (one third part of the said sum of [*ninety*] pounds, the produce of the aforesaid shipping and fire shares), *She* the said [*appointor*], (in exercise, and by virtue of the power (*b*), or authority given to, or vested in her, by or under and by virtue of the *said indenture of the —— day of ——, 18—, as aforesaid, and of all other powers enabling her in his behalf,) *doth* by this deed or writing, sealed and delivered by her in the presence of the two credible persons whose names are intended to be hereupon indorsed, as witnesses attesting such sealing and delivery, direct and appoint; and also give, assign, and make over to the said [*husband*], her husband, his executors, administrators, and assigns, ALL THAT the one full and equal third part or share by the said indenture of the —— day of ——, 18—, settled upon, or intended for her the said [*appointor*], of and in the said sixteen shipping shares, and sixteen fire shares, of and in the said corporation of the London Assurance; or of and in the produce of or from the sale and disposition of the same; and the dividends, interest, and proceeds thereof: AND the full and whole right, title, and interest, benefit, and advantage of, in, and to the said one-third part of the said shipping and fire shares respectively, with the appurtenances. TO HAVE, hold, receive, and take the same, unto and by him the said [*husband*], his executors, administrators, and assigns, for his and their own absolute use and benefit. AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the said recited agreement, and for and in consideration of the said sums of [*thirty*] pounds, [*thirty*] pounds, and [*thirty*] pounds respectively, so paid by the said [*trustee*] to them the said [*husband*], [*son*], and [*daughter*], as hereinbefore mentioned; the receipt whereof they the said [*husband*], [*son*], and [*daughter*], do hereby respectively acknowledge; and of and from the same, and every

OF MONEY BY A WIFE TO HER HUSBAND, AND RELEASE BY THREE TO TRUSTEES.

First Testatum. Appointment by a married woman under a power.

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to her husband, of

one-third of sixteen shipping shares and sixteen fire shares, in the London Assurance.

All the right, &c.

Habendum.

Second Testatum.

(*b*) As to an appointment under a power, *vide ante*, p. 502, (*a*).

OF MONEY BY A WIFE TO HER HUSBAND, AND RELEASE BY THEM TO TRUSTEES.

part thereof, acquit, release, and discharge the said [*trustees*], his heirs, executors, and administrators for ever, by these presents; *They* the said [*husband*], (for himself, and the said [*appointor*], his wife respectively, and for their and each of their heirs, executors, and administrators); *And* the said [*son*], for himself, his heirs, executors, and administrators; *And* the said [*daughter*], for herself, her heirs, executors, and administrators, *have*, and each of them *hath* remised, released, and for ever quitted claim; *And* by these presents *do*, and each of them *doth* remise, release, and for ever quit claim unto the said [*trustee*], his heirs, executors, and administrators: and also to the heirs, executors, *administrators, and assigns of the said [*deceased trustee*], deceased, ALL actions and suits, cause or causes of action or suit, and other proceedings at law or in equity, accounts, reckonings, claims, and demands whatsoever, which they the said [*husband*], and [*appointor*], his wife, [*son*], and [*daughter*] respectively, or any or either of them, now have, or hath, or ever had, or can, or may, or otherwise could or might bring, commence, carry on, claim, and demand against the said [*trustee*], his heirs, executors, administrators, or assigns, or the said [*deceased trustee*], deceased, his heirs, executors, administrators, or assigns, or any or either of them, or their or any or either of their lands, tenements, goods, and chattels whatsoever, for or on account of the said sixteen shipping shares, and sixteen fire shares, in the said London Assurance Office, so vested in them the said [*trustees*], on the trusts of the said indenture of the —— day of ——, 18—, as hereinbefore recited, or any or either of them: or the dividends, interest, or yearly proceeds thereof, or any part thereof; or the sum or sums of money produced by the sale or disposition of the said shares, or any or either of them; or for, or on account, or in consequence of the trusts declared by the said indenture of the —— day of ——, 18—, as aforesaid, or any of them, or any clsuse, matter or thing whatsoever, in the said indenture contained, or in any wise relating thereto, from the day of the date of the said indenture, up to the day of the date of these presents. IN WITNESS, &c.

Release by husband, for himself and wife, and by two others,

to trustee and the representatives of deceased trustee, of all actions, &c.

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OF MONEY, NOMINAL AND SUBSTANTIAL SHARES, BENEFIT OF SURVIVORSHIP, MAINTENANCE, &c.

*APPOINTMENT *by Husband and Wife, under a Power in their Marriage Settlement, of a* SUM OF MONEY *among their Seven Children; namely, a nominal Sum to the eldest, who relinquishes his Right to a substantial Share; a nominal Sum to a married Daughter, on whose Marriage the Father advanced a Portion; and with the Consent of the eldest Son, the married Daughter, and her Husband, the Residue equally among a Son and Four Daughters, Infants; the Son's Share to vest at Twenty-one, the Daughters' Shares to vest at Twenty-one, or Marriage; but the Payment to be postponed until the Parents' Death; with Benefit of* SURVIVORSHIP *and* ACCRUER; *and Direction to the Trustees to apply the Interest for* MAINTENANCE *after the Parents' Decease, until the Shares vest: But if neither of the Infants should live to gain a vested Interest, their Shares to be divided between the eldest Son, and married Daughter, equally.*

Exordium.

TO ALL PERSONS WHOM THESE PRESENTS SHALL COME UNTO OR CONCERN, [*appointor*], of, &c. and [*other appointor*], his wife, whose maiden name was [ ]; and [*eldest son of appointors*], of, &c. and [*husband of daughter of appointors*], of, &c. and [*A.*] his wife, whose maiden name was [ ], *severally send greeting.* WHEREAS (recite a marriage settlement) whereby [*appointor*] covenanted to invest [3000*l.*] belonging to his wife, in the names of trustees, *In trust* for husband and wife for their respective lives; *And* after the decease of the survivor, *to divide the principal money among all and every their

Recital of settlement, giving a power to appoint a sum among all the children of the marriage, in such shares as parents should appoint.

OF MONEY, NOMINAL AND SUBSTANTIAL SHARES, BENEFIT OF SURVIVORSHIP, MAINTENANCE, &c.

children, as they should appoint.) And whereas the marriage between the said [*appointor*] and [*wife, maiden name*], hath been duly had and solemnized: And there are seven children of the said marriage, now living, that is to say; the said [*eldest son*], their eldest son, who hath attained his age of twenty-one years, the said [*A.*] the wife of the said [*husband*], and [*son, and four daughters*]; which said [*son and four daughters*] are respectively under the age of twenty-one years. And whereas the said [*appointor*] hath previously to the execution of these presents secured to the said [*husband*] the sum of [£3000] as the portion or fortune of the said [*A.*] his wife: And the said [*eldest son*], being otherwise provided for, hath consented and agreed to relinquish his right to a beneficial or substantial share in the said sum of [£3000], agreed to be settled by the said recited indenture as aforesaid. Now know ye, and these presents witness, that the said [*appointor*], and [*other appointor*], his wife, in pursuance of the power or authority for that purpose given or reserved to them by the said recited indenture; and by force and virtue thereof, and of every other power or authority enabling them in this behalf; and with the consent of the said [*eldest son*], and [*husband*], and [*A.*] his wife, testified by their severally sealing and delivering these presents, *have* directed and appointed; *And* by this deed or instrument in writing, under the hands and seals of the said [*appointor*], and [*other appointor*], his wife, and attested by two credible witnesses, *do* jointly direct and appoint, *That* the said sum of [£3000], by the said recited indenture covenanted or agreed to be assigned to, and vested in the said [*trustees*] as aforesaid; and the stocks, funds, and securities in, or upon which the same is, or shall, or may be laid out, or invested, shall be shared and divided among, and shall, after the decease of the said [*appointor*], and [*other appointor*], his wife, be paid to the children of the said [*appointor*], and [*other appointor*], his wife, in the proportions following, that is to say; the sum of —— pounds, part thereof, to be the share of the said [*eldest son*], and to be an interest vested in him immediately upon the execution of these presents; and the sum of ——

Recital of the marriage,

and that there are seven children—eldest son of age; eldest daughter married, and five infants.

Recital of advancement of portion for married daughter;

and that eldest son has relinquished his right to a substantial share.

Testatum.

Appointment by husband and wife,

with the consent of eldest son, and married daughter and her husband,

that the sum

shall be divided after the parents' decease, and be paid to their children in the proportions following, *viz.*

—— pounds to the eldest son to be vested immediately;

—— pounds to married daughter, to be vested immediately:

pounds, other part * thereof, to be the share of the said [*A. daughter, married name*], and to be an interest vested in her immediately upon the execution of these presents; *But* the actual payment of the said sums of —— pounds and —— pounds, to be postponed until the decease of the survivor of the said [*appointor*], and [*other appointor*], his wife: *And* as to the sum of [£2990] being the remaining part of the said sum of [£3000], the same to be equally divided among the said [*son, and four daughters*], share and share alike; the share of the said [*son*], to be an interest vested in him at his age of twenty-one years; and the share of each of them the said [*daughters*], to be an interest vested in her at the age of twenty-one years, or day of marriage, which shall first happen; *But* if the said [*son*], or any of them the said [*daughters*], should attain a vested interest in his, her, or their share, or respective shares, in the lifetime of the said [*appointor*], and [*other appointor*], his wife, or of the survivor of them, then the actual payment of his, her, or their share, or respective shares, shall be postponed until the decease of the survivor of the said [*appointor*], and [*other appointor*], his wife. PROVIDED ALWAYS, and the said [*appointor*], and [*other appointor*], his wife, do hereby further direct and appoint, that if the said [*son*] should happen to die under the age of twenty-one years; or if any of them the said [*daughters*] should happen to die under the age of twenty one years, without being, or having been married, then the share or shares of him, her, or them so dying, of and in the said sum of [£2990], shall go and accrue to the survivor or survivors of them; and shall vest in, and be paid to him, her, or them (if more than one), in equal parts and shares, at or upon such and the same ages, days, and times respectively, and in such and the same manner as is hereinbefore directed and appointed touching or concerning his, her, or their original portion or portions, or as near thereto as circumstances will permit; AND (*a*) that in case any other or others of such chil-

OF MONEY, NOMINAL AND SUBSTANTIAL SHARES, BENEFIT OF SURVIVORSHIP, MAINTENANCE, &c.

but the payment to be postponed till parents' death;

and 2990*l.* the remainder, equally among the other children;

son's share to vest at 21;

daughters' shares to vest at 21, or marriage;

but the payment to be postponed till parents' death.

Appointment of benefit of survivorship between the younger children, in case the son dies under 21, or the daughters under 21, without having been married.

Benefit of survivorship to extend to accruing shares.

(*a*) This clause may be more shortly expressed, thus,

"AND that such benefit of survivorship and accruer shall extend as well to the surviving or accruing as to the original portion or portions."

Short clause, survivorship to extend to accruing shares.

OF MONEY, NOMINAL AND SUBSTANTIAL SHARES, BENEFIT OF SURVIVORSHIP, MAINTENANCE, &c.

*dren should die before such accruing or surviving part or share, parts or shares, shall become vested as aforesaid, then all and every such accruing or surviving part or share, parts or shares, shall again be subject and liable to such new chance, contingency, and condition of accruer to the survivor or survivors, and other or others of such children, as before is declared touching his, her, and their original portion and portions. AND the said [*appointor*], and [*other appointor*], his wife, do hereby further direct and appoint, that in the meantime, after the decease of the survivor of them the said [*appointor*], and [*other appointor*], his wife, the income, or the dividends, interest, or annual produce, of the presumptive share of each of them the said [*son*], and [*daughters*], of and in the said sum of [£2990], shall be applied to the trustees or trustee for the time being of the said recited indenture, for or towards his or her maintenance, education, and support, until such his or her share shall become vested, or he or she shall previously die. *But* in case the said [*son*] should die under the age of twenty-one years; and if each of them the said [*daughters*], should die under the age of twenty-one years, and without being, or having been married, then the said sum of [£2990] shall be divided between the said [*eldest son*], and [*A.*] the wife of the said [*husband*], share and share alike, and their respective executors, administrators, and assigns. IN WITNESS whereof they the said [*appointor*], and [ ] his wife, have hereunto set their hands and seals the —— day of ——, 18—.

Appointment of maintenance after parents' decease, until shares vest.

If son die under 21, or daughters die under 21, without having been married, the 2990*l.* to be between the eldest son and married daughter equally.

Testimonium.

OF STOCK TO CHILDREN EQUALLY; PARTIAL SURVIVORSHIP; POWER OF REVOCATION.

*APPOINTMENT *by a Father of* STOCK *amongst his* YOUNGER CHILDREN EQUALLY, *subject to his own and his Wife's Life Interest therein, with* PROVISOES *that if either of two Infant Daughters should die under Twenty-one, without having been married, her share shall go to the other younger Children; and that if both Infant Daughters should die under Twenty-one, without having been married, the original and accruing Share of the Survivor shall go to the other younger Children; and a* POWER OF REVOCATION. *The Stock being the Produce of a Sale of Lands limited after Estates for Life to the use of such one or more of the Children as the Father should appoint; which Lands were appointed to the eldest Son, for the Purpose of being sold by him, in order that the Produce might be invested in the Stocks, and be held upon Trusts similar to the Uses declared of the Lands.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*appointor*], of, &c. esquire, *sends greeting.* WHEREAS by indentures of lease and release, bearing date respectively on or about the —— and —— days of ——, 18—, the release being of five parts, and made or expressed to be made between [*C. B. father*], esquire, of the first part; the said [*C. B. appointor*], party hereto, son of the last mentioned [*father*], of the second part; [*father of intended wife*], clerk, and [*intended wife*], one of the daughters of the said [*father of intended wife*], of the third part; [*releasee*], gentleman, and [*other releasee*], gentleman, of the fourth part; and [*trustee of term*], and [*other trustee of term*], gentleman, of the fifth part; *In consideration* of a marriage then intended to be, and soon

Recital of settlement on appointor's marriage, whereby

OF STOCK TO CHILDREN EQUALLY; PARTIAL SURVIVORSHIP; POWER OF REVOCATION.

*afterwards solemnized, between the said [*appointor*], party hereto, and [*wife, maiden name*], a certain mansion-house, farms, lands, tenements, and hereditaments, situate in the parishes of ——, &c. were conveyed unto the said [*releasees*], their heirs and assigns, (subject to a term of [500] years, created by an indenture of release bearing date on or about the —— day of ——, 17—; the trusts of which said term were for the purpose of raising a sum of [1,300*l.*] at the request of the said [*C. B.*], the father, his executors, or administrators, but which said sum has never been raised; and also subject to an annuity of [100*l.*], payable to [*A. B.*], the wife of the said [*C. B.*] the father, for her life); *To the use* of the said [*C. B.*], the father, and his assigns, for his life, without impeachment of waste; with a limitation *To the use* of the said [*releasees*], and their heirs, during the life of the said [*C. B.*], the father, *In trust*, to support the contingent remainders thereinafter limited; with remainder *To the use* of the said [*appointor*], party hereto, his heirs and assigns, until the solemnization of the said then intended marriage; and after the solemnization thereof, *To the use* of the said [*appointor*], party hereto, and his assigns, for his life, without impeachment of waste; with a limitation, *To the use* of the said [*releasees*] and their heirs, during the life of the said [*appointor*], party hereto, *In trust*, to support the contingent remainders thereinafter limited; remainder *To the use* of the said [*intended wife, maiden name*], and her assigns, for her life, without impeachment of waste, for her jointure, and in bar of dower; remainder *To the use* of all and every, or such one (*a*) or more of the child

lands

were conveyed (subject to a term of 500 years, for raising a sum of 1,300*l.*, and subject to an annuity to appointor's mother)

to the use of appointor's father for life;

remainder, to the use of trustees, to preserve contingent remainders;

remainder, to the use of appointor till marriage;

and after marriage, to the use of appointor for life;

remainder, to the use of trustees, to preserve contingent remainders;

remainder, to the use of intended wife for life, in bar of dower;

remainder, to

What words authorize an exclusive appointment.

(*a*) Powers to appoint "to such of my children, as my wife shall think fit;" *Lief* v. *Saltingstone*, 1 Mod. 189; "to one or more of my children, as my wife shall think fit;" *Thomas* v. *Thomas*, 2 Vern. 513; "to be at my wife's disposal, provided it be to any of my children;" *Tomlinson* v. *Dighton*, 1 P. Wms. 149; "amongst all or such of my children;" *Macey* v. *Shurmer*, 1 Atk. 389; "to and amongst such of my relations, in such parts, shares, and proportions, as my wife shall think proper;" *Spring* dem. *Titcher* v. *Biles*, 1 Durnf. & East, 435 n.; "for the use of such of the children, or child and issue of the marriage, as well male as female, and in such shares, parts, and proportions,

*or children of the said [*appointor*], party hereto, on the body of the said [*intended wife, maiden name*], to be begotten, for such estate or estates in possession, reversion, remainder, or contingency, and in such parts, shares, and proportions, and subject to such provisoes, conditions, and limitations, and to such charges, either of annuities, or sums of money in gross, on the whole of the premises, together, or in part or parts thereof only, for the benefit of some or one of such children, as the said [*appointor*], party hereto, by any deed or deeds, instrument (*b*) or instruments in writing, with or without power of revocation, and of limiting new uses, to be sealed and delivered by him in the presence of and to be attested by two or more credible witnesses, should direct, limit, or appoint. AND WHEREAS the said [*A.*], the wife of the said [*C. B.*], the father, departed this life in his lifetime: AND the said [*C. B.*], the father, departed this life on or about the —— day of ——, 17—, having first duly signed and published his last will and testament in writing, bearing date on or about the —— day of ——, 17—, and appointed the said [*appointor*], party hereto, sole executor thereof; and soon after the decease of the said [*C. B.*], the father, the said [*appointor*], party hereto, duly proved the said

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the use of such one or more of the child or children of the marriage, as the father should by deed or will appoint.

Recital of death of appointor's mother.

Recital of the death of appointor's father, having first made his will, and named appointor executor,

who duly proved the same.

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and for such estate or estates;" *Doe* dem. *Willmett* v. *Alchin*, 2 Barnew. and Ald. 122; or "unto and amongst all *such* child or children of *A.* in such parts, shares, and proportions, manner and form, as *B.* should appoint;" *Wollen* v. *Tanner*, 5 Ves. 218; [see also *Tucker* v. *Tucker*, 13 Pri. 607;] have been held, to enable the donees to appoint exclusively to any of the objects. Sug. Pow. 482, 3d edit.; 5 Ves. 857. The word "such" standing unexplained, imports an intention to give the power of selection. 2 Barnew. and Ald. 125.

As to what words will not authorize an exclusive appointment, *vide ante*, p. 523 (*a*).

(*b*) When the word instrument or writing, or any other general term, is mentioned in the power, the donee may appoint by will. *Kibbet* v. *Lee*, Hob. 312; Earl of *Darlington* v. *Pulteney*, Cowp. 260, 267—8. Countess of *Roscommon* v. *Fowke*, 4 Bro. P. C. 523. So if the power be to appoint by deed *or otherwise*, it will authorize an appointment by will; or by will *or otherwise*, an appointment by deed. *Irvin* v. *Farrer*, 19 Ves. 86.

A power to appoint by deed or writing, or any other general term, will authorize an appointment by will; or by will or otherwise, an appointment by deed.

OF STOCK TO CHILDREN EQUALLY; PARTIAL SURVIVORSHIP; POWER OF REVOCATION.

will in the Prerogative Court of the *Archbishop of Canterbury. And whereas by a deed-poll, or instrument in writing, bearing date on or about the —— day of ——, 18—, under the hand and seal of the said [*appointor*], party hereto; *He* the said [*appointor*], party hereto, in execution of the power reserved by the said hereinbefore recited indenture of release of the —— day of ——, 18—, and of all other powers; *did* limit, direct, and appoint, *that* certain messuages, farms, lands, tenements, and hereditaments, (parcel of the hereditaments and premises comprised in the said hereinbefore recited indenture of release of the —— day of ——, 18—,) should immediately upon the decease of the survivor of them the said [*appointor*], party hereto, and [ ] his wife, be and enure *To the only use and behoof* of [*eldest son*], the eldest son of the said [*appointor*], party hereto, his heirs and assigns, freed and discharged from the said sum of [1300*l.*], so to be raised as aforesaid; and from the right and interest of the said [*appointor*], party hereto, as executor, as aforesaid, or otherwise. And whereas, by an indenture bearing even date with the said hereinbefore recited deed-poll, and made, or expressed to be made, between the said [*C. B. eldest son*], the son, of the one part, and the said [*C. B. appointor*], party hereto, of the other part; the said [*C. B. eldest son*], the son, did covenant with the said [*C. B. appointor*], party hereto, to make and execute all necessary conveyances and assurances to convey the premises so appointed to him as aforesaid, to [*three purchasers*] respectively, who had contracted for the purchase of the same, as therein is mentioned: And *it is thereby covenanted and agreed*, that the consideration monies, after deducting the expenses, should be laid out in capital stock, in the names of [*three trustees*], *Upon the trusts*, and subject to the powers and provisoes in the next hereinafter recited indenture mentioned. And whereas, by an indenture bearing date on or about the —— day of ——, 18—, and made, or expressed to be made, between the said [*appointor*], party hereto, and [ ] his wife, and the said [*eldest son*], the eldest son of the one part, and the said [*three trustees*], of the other part; *After reciting*

Recital of a deed poll, whereby appointor directed that part of the premises comprised in the settlement should, after his, and his wife's decease, be to the use of his eldest son in fee, freed from the right of the appointor, as executor to his father, to the 1300*l.*

Recital of an indenture of even date with the last recited deed-poll,

whereby the appointor's son covenanted with him to convey the premises appointed to persons who had contracted for the purchase thereof;

and it was thereby agreed, that the consideration monies, after deducting the expenses, should be laid out in stock, in the names of trustees, on the trusts mentioned in the next recited deed.

OF STOCK TO CHILDREN EQUALLY; PARTIAL SURVIVORSHIP; POWER OF REVOCATION.

(amongst other things) that the said [*one of the purchasers*] had since *assigned his contract to [*new purchaser*]: *And that* the said premises so contracted for, with other lands not included in the said indenture of release of the —— day of ——, 18—, had been conveyed unto the said purchaser: *And* that the costs and charges amounted to [452*l.* 4*s.*], which being deducted from [9588*l.*], the purchase monies, left a balance of [9135*l.* 4*s.*], to be settled in manner therein and hereinafter mentioned; *It is witnessed,* that for settling the said sum of [9135*l.* 4*s.*] the said [*appointor*], party hereto, covenanted with the said [*three trustees*], that he the said [*appointor*], party hereto, would within two calendar months invest the said sum of [9135*l.* 4*s.*] in their names, in the purchase of 5*l.* Navy Stock Annuities. AND *it is by the said indenture now in recital agreed,* that after the same should be invested, the said [*three trustees*], their executors, administrators, and assigns, should stand possessed thereof, *In trust* to pay the interest and dividends thereof unto the said [*appointor*], party hereto, for his life: *And* after his decease, in case the said [ ], his wife, should survive him, *In trust,* to pay the said interest and dividends to her for life; *And* after the decease of the survivor of them, the said [*appointor*], party hereto, and [ ] his wife, *In trust,* to raise by sale or transfer of a sufficient part of the said Bank Annuities, [4000*l.*], upon the trusts hereinafter declared; *And* subject to the raising of the same, *Upon trust,* as to all the residue of the said trust monies, for all and every, or such one or more of the child and children of the said [*appointor*], party hereto, and [ ] his wife, begotten or to be begotten, for such estate and estates, interest and interests, in possession, reversion, remainder, or contingency; and in such parts, shares, and proportions, and subject to such provisoes, conditions, and limitations, and to such charges, either of annuities, or sums of money in gross, on the whole of the said rest, residue, and remainder of the said capital stock, together, or in part or parcel thereof only, for the benefit of some or one such children as the said [*appointor*], the elder, party thereto, at any time or times thereafter, by any deed or deeds, instrument or instruments in writing, with or

Recital of indenture,

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whereby appointor covenanted with trustees that he would, within two months, invest the balance of the purchase monies in the five per cent. Navy Annuities, in their names.

In trust to pay the interest to appointor for life;

then to his wife for life;

and after the decease of the survivor, in trust to raise out of the capital 4000*l.* upon the trusts thereinafter declared;

and subject thereto, upon trust, as to all the residue of the trust monies, for all or such one or more of the child or children of the marriage, as appointor should by deed or will direct.

OF STOCK TO CHILDREN EQUALLY; PARTIAL SURVIVORSHIP; POWER OF REVOCATION.

*without power of revocation, and of limiting new or other estates or interests therein, to be sealed and delivered by him, in the presence of and to be attested by two or more credible witnesses, or by his last will and testament in writing, or any writing purporting to be his last will and testament, to be signed and published by him in the presence of and to be attested by three or more credible witnesses, should limit, direct, or appoint. AND WHEREAS soon after the execution of the said hereinbefore recited indenture of the —— day of ——, 18—, the said sum of [9135*l.* 4*s.*] was invested in the purchase of the sum of [10,152*l.* 0*s.* 4*d.*], five per centum Navy Bank Annuities, in the names of the said [*three trustees*], of whom the said [*surviving trustee*] is now the only survivor. AND WHEREAS the said [*eldest son*], the eldest son of the said [*appointor*], party hereto, hath departed this life: AND the said [*appointor*], party hereto, hath issue by the said [ ] his wife, now living, two sons, (namely,) [*A. B.*], now his eldest son, [*C. B.*], his youngest son, and five daughters, (namely,) [*E. Y.*], the wife of, &c. [*F. B.*], [*G. B.*], [*H. B.*], and [*I. B.*]; and all the said children, except the said [*H. B.*] and [*I. B.*] have attained the age of twenty-one years. AND WHEREAS the said [*appointor*], party hereto, is desirous of appointing amongst his said youngest son and five daughters, in the manner hereinafter mentioned, so much of the said sum of [10,152*l.* 4*s.*] five per centum Navy Bank Annuities, as shall remain after raising the said sum of [4000*l.*] so to be raised thereout as aforesaid. NOW THESE PRESENTS WITNESS, that for carrying the said desire into effect, and in consideration of the natural love and affection which he hath for his said youngest son and five daughters, and by force and virtue, and in exercise and execution of the power or authority to him for this purpose given or reserved by the said hereinbefore recited indentures of the —— day of ——, 18—, the —— day of ——, 18—, or either of them, and of all other powers and authorities enabling him in his behalf, *He* the said [*appointor*], party hereto, *doth* by this deed, or instrument in writing, sealed and delivered by him in the presence of the two credible persons *whose names are intended to be hereupon indorsed, as

Recital that the 9135*l.* 4*s.* was invested in the purchase of 10,152*l.* 0*s.* 4*d.* five per cent. Bank Ann. in the names of three trustees, two of whom are now dead.

Recital, that appointor's eldest son is dead;

and that appointor has living, his wife, two sons, and five daughters, all of whom, except two of the daughters, have attained twenty-one.

Recital that the appointer is desirous of appointing, among his youngest son and five daughters, so much of the stock as shall remain, after raising the 4000*l.*

Testatum.

Appointment by the father,

witnesses attesting the sealing and delivery of these presents by him the said [*appointor*], party hereto, direct, limit, and appoint, that from and immediately after the decease of the survivor of them, the said [*appointor*], party hereto, and [ ] his wife, so much of the said sum of [10,152*l.* 0*s.* 4*d.*] five per centum Navy Bank Annuities, as shall remain after raising the said sum of [4000*l.*] so to be raised thereout, as hereinbefore is mentioned; and the interest, and dividends thereof, shall remain and be, IN TRUST for the said [*C. B.*], [*E. Y.*], [*F. B.*], [*G. B.*], [*H. B.*], and [*I. B.*] respectively, and their respective executors, administrators, and assigns, in equal shares, as tenants in common. PROVIDED NEVERTHELESS, that if either of them the said [*H. B.*] and [*I. B.*], shall die under the age of twenty-one years, without being, or having been married, then and in such case, the share of her so dying, of and in the said residue of the said sum of [10,152*l.* 0*s.* 4*d.*], five per centum Navy Bank Annuities, shall go to and remain to the said [*C. B.*], [*E. Y.*], [*F. B.*], and [*G. B.*], and the survivor of them, the said [*H. B.*] and [*I. B.*], in equal shares, as tenants in common. PROVIDED FURTHER NEVERTHELESS, that if both of them the said [*H. B.*] and [*I. B.*] shall die under the age of twenty-one years, without being, or having been married, then and in such case, as well the original share of the survivor of them, so dying, as the share which by virtue of the last mentioned clause shall have survived, or accrued to the survivor of them, of and in the said residue of the said sum of [10,152*l.* 0*s.* 4*d.*], five per centum Navy Bank Annuities, shall go, and remain to the said [*C. B.*], [*E. Y.*], [*F. B.*], and [*G. B.*], in equal shares, as tenants in common. PROVIDED FURTHER NEVERTHELESS, and the said [*appointor*] party hereto, doth hereby declare, that it shall be lawful for the said [*appointor*], party hereto, at any time or times hereafter, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by him in the presence of and attested by two or more credible witnesses, to revoke(*b*)

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that after his and his wife's death, so much of the stock as shall remain after raising the 4000*l.* and the interest thereof, shall be in trust for his younger children equally.

Proviso, that if either of the two infant daughters should die under 21, without having been married, her share shall go to the other younger children.

Proviso, that if both infant daughters should die under 21, without having been married, the original and accruing share of the survivor shall go to the other younger children.

Power of revocation.

(*b*) As to the leading points of the doctrine of revocation, *vide ante*, p. 513 (*g*).

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determine,* and make void, all or any of the trusts, intents, purposes, and provisions hereinbefore directed, appointed, declared, and contained, of and concerning the said residue of the said sum of [10,152*l.* 0*s.* 4*d.*], five per cent. Navy Bank Annuities, and the interest and dividends thereof, or any part thereof respectively. In WITNESS, &c. *ut ante*, p. 507.

TESTAMENTARY APPOINTMENTS.

As wills under powers partake generally of the qualities of proper wills, and if relating to personal estate, and although made by married women, must be proved in the Ecclesiastical Court, *Ross* v. *Ewer*, 3 Atk. 160, such testamentary appointments are classed under WILLS.

NEW TRUSTEES.

For APPOINTMENTS OF NEW TRUSTEES, see TRUSTS.

APPOINTMENT AND RELEASE.

For APPOINTMENT AND RELEASE, &c. see titles ANNUITY, MORTGAGE, PURCHASE, and SETTLEMENT.

APPOINTMENT GENERALLY.

And see further as to APPOINTMENT, INDEX TO THE PRECEDENTS, title APPOINTMENT.

APPORTIONMENT.

OF RENT BY TWO PURCHASERS OF LEASEHOLD, BY CROSS COVENANTS AND POWERS OF DISTRESS.

APPORTIONMENT *of* RENT *between two Purchasers of distinct Premises held under one Lease, by means of* CROSS COVENANTS *by each with the other, to pay his apportioned Ground Rent; to pay increased Rent for carrying on excepted Trades, if occasioned by him; to perform the Covenants of the Lease, so far as they relate to the Premises assigned to him; for Acquittal and Indemnity: with* CROSS POWERS OF DISTRESS *for Recovery of any Sums which one may pay in respect of the Rents and Covenants agreed to be paid by the other* (*a*).

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—; BETWEEN [*purchaser*], of, &c. of the one part; and [*other purchasers*], of, &c. of the other part. WHEREAS by indenture of lease, bearing date on or about the —— day of ——, 17—, and made between [*lessor*], of the one part, and [*lessee*], of the other part: (*recital of a lease of* a piece of ground, and two messuages thereon, to [*lessee*], for eighty-eight years and three *quarters of a year wanting ten days; *Under* the yearly rent of (twelve pounds sixteen shillings) and an

Parties.

Recital of lease for years, of a piece of ground and two houses thereon.

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(*a*) Sometimes the apportionment is made (in a manner similar to the above) in the assignment from the vendor, each of the parties having a copy of the deed, as in the form of ASSIGNMENT OF LEASEHOLDS, under title PURCHASE. See there also a form of an ASSIGNMENT, where the vendor retains part of the premises. For the form of an AGREEMENT for purchase of part of a leasehold estate, *vide ante*, Vol. 1, p. 164—8.

Apportionment of rent sometimes made in the assignment of leaseholds to different purchasers.

OF RENT BY TWO PURCHASERS OF LEASEHOLD, BY CROSS COVENANTS, AND POWERS OF DISTRESS.

additional rent of (fifty) pounds, in case certain trades are carried on therein. And whereas the said [*lessee*] did, on or about the —— day of ——, 18—, cause the messuages, tenements, and premises comprised in the said recited indenture of lease, to be put up to sale, in two distinct lots, by —— auctioneer, at ——, pursuant to printed particulars, and conditions, published previous to such sale; at which sale the said [*purchaser*], and [*other purchaser*] attended, and being the highest bidders for, were declared the purchasers of the messuages or tenements and premises comprised in the said recited indenture of lease; that is to say; the said [*purchaser*], of one of the said messuages, being No. —— in ——, at or for the price or sum of £ ——; and the said [*other purchaser*] of the other of the said messuages, with the appurtenances, being No. —— in —— aforesaid, at or for the price or sum of £ ——. And whereas by indenture of assignment, bearing even date with, but executed previously to the execution of these presents, and made between the said [*lessee*], of the first part, the said [*purchaser*], of the second part, and the said [*other purchaser*] of the third part; in consideration of the sum of £ —— to the said [*lessee*], paid by the said [*purchaser*], he the said [*lessee*] *hath* granted, bargained, sold, assigned, transferred, and set over unto the said [*purchaser*], his executors, administrators, and assigns, *All that* messuage or tenement, &c. *To hold* the same, unto the said [*purchaser*], his executors, administrators, and assigns, from the —— day of —— then last past, for and during all the rest, residue, and remainder then to come and unexpired of the said term of eighty-eight years and three quarters of a year wanting ten days, by the said recited indenture of lease granted; *Subject nevertheless* to the payment of the yearly rent or sum of (six pounds eight shillings), being one moiety or half part of the said yearly rent or sum of (twelve pounds sixteen shillings), by the said indenture of lease reserved and made payable; *And subject also* to the performance of the covenants, conditions, and agreements, in the same indenture of lease inserted and * contained, so far only as the same relate to and concern the messuage, or tenement and premises thereby assigned. And where-

Recital of sale by auction of one house to one purchaser, and the other to another.

Recital of assignment of one of the houses to one purchaser,

for the residue of the term;

subject to the apportioned rent.

and subject to the covenants, so far as relates to the part assigned.

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OF RENT BY TWO PURCHASERS OF LEASEHOLD, BY CROSS COVENANTS, AND POWERS OF DISTRESS.

as *(recite assignment to* [to other purchaser] *of the other house in like manner.)* And whereas by the conditions of the said recited sale, it was stipulated, that each of them the said [*purchaser*], and [*other purchaser*], the purchasers of the said messuages, or tenements and premises, should pay the yearly rent or sum of (six pounds eight shillings) in respect of the premises by him purchased, being one moiety of the said yearly rent of (twelve pounds sixteen shillings), reserved by the said recited indenture of lease (*a*). And whereas for the more effec-

Recital of a similar assignment to the other purchaser.

Recital that the conditions of sale stipulated that the rent should be apportioned.

Recital that for

(*a*) A purchaser of part of leasehold premises held under one lease cannot object to the title on the ground of a clause of re-entry, &c. which, by the neglect of another purchaser in paying the apportioned rent, may cause the purchaser to be evicted, or distrained without his default. For the whole premises must necessarily remain subject to the landlord's distress, &c. as no apportionment of the rent can be made, as against the landlord without his consent. Thus certain leasehold premises, consisting chiefly of houses, were sold by auction in several lots. The purchaser of lots 28 and 33 excepted to the Master's report in favour of the title. The first exception was on the following grounds: —In the particulars and conditions of sale, the premises were described as being held under a lease from the Earl of Halifax, for a term of years, subject to a ground rent of £60, and to several under leases; and it was mentioned, that the purchaser of lot 9 was to be exclusively subject to the payment of the ground rent of £60. It appeared by the abstract, that the original lease contained a clause of re-entry, on the whole premises, in default of payment of the rent. The counsel for the exception argued, that under the clause of re-entry, the purchaser will be liable to the forfeiture of his estate, upon the default of a third person. Of this liability there was nothing to apprize him; for though a person purchasing a leasehold estate, must expect to take it subject to those inconveniences that are necessarily incident to the tenure, such as a power of distress; yet merely being informed that there is a lease reserving rent, cannot be considered to render him conusant of its containing other, and less usual remedies for enforcing payment. On the other side it was contended, that the purchaser, having notice of the lease, bought, subject to its covenants. *Hall* v. *Smith*, 14 Ves. 426. A clause of re-entry is by no means unusual, but what every one would naturally be led to suppose the lease contained. Sir Thomas Plumer, Master of the Rolls, said, "I think there is nothing at all in this objection. It was properly admitted, that though the purchaser is liable

On a sale in lots of premises, the particulars of which state them to be held under one lease, reserving rent, and that the purchaser of one lot is to be exclusively subject to the rent, the other purchaser cannot object to the title, on the ground of a clause of re-entry on non-payment, contained in the lease.

OF RENT BY TWO PURCHASERS OF LEASEHOLD, BY CROSS COVENANTS, AND POWERS OF DISTRESS.

tually apportioning the said yearly rent or sum of (twelve pounds sixteen shillings) between them the said [*purchaser*]

to be called on for the rent, and even to be distrained on for it, and may thus be put to very great inconvenience, yet that would not form a ground for rejecting the title. If that were urged as an objection, the answer would be, that when several parts of an estate, held under an entire lease, are sold, the exoneration of one part from the rent does not mean that the rights of the landlord are to be altered; he is not a party to the sale. The purchaser must know this; and knowing that there was a holding by one lease under Lord Halifax, and that his rights were to remain untouched, he would come with a very bad grace to create any difficulty on that head. Now I do not see how to distinguish betweeen that objection and the present, which applies only to another remedy for the recovery of the rent. It is said that the purchaser was only apprised of what is at law incident to the tenure; but having notice of the lease, must we not consider that he had constructive notice of this clause? It is a clause very usually inserted; and why did he not look into the the lease itself; To both the objections, therefore, I think that the same answer is applicable; namely, that he had either real or constructive notice at the time of the sale. The true meaning of what is contained in the particular of sale is, that though the landlord was to continue to have the same rights over the whole estate, yet as between the different purchasers, *inter se*, the purchaser of lot 9 only was to be liable to the rent." *Walter* v. *Maunde*, 1 Jac. & Walk. 181.

A person contracting to purchase leasehold property, is held to contract with notice of the clauses of the lease.

A lessor cannot make a valid apportionment of the rent, without the intervention of a jury, or the consent of the lessee.

Nor can the lessor make a valid apportionment of the rent without the intervention of a jury, or the consent of the lessee. Thus, on a bill for the specific performance of the purchase of a public house sold by auction, which was described in the particulars of sale as "Lot 2, an old established freehold brick built public house, &c. on lease, with a house adjoining, to Mr. *R.* which expires Michaelmas 1831. *The apportioned rent for this lot is* £40 per annum." Lot 3 was thus described:—"A freehold house, adjoining the preceding, and communicating thereto, on lease with lot 2, to Mr. *R.* which expires Michaelmas, 1831. The apportioned rent for this lot is £25 : 5*s. per annum.*" This lot was not sold. The purchaser of lot 2 objected to the title. Sir John Leach, Vice Chancellor, said, "The particular, under which the defendant purchased, represents the £40 *per annum* to be an apportioned rent for this lot; and he insists, that there not being, at the time of the sale, any apportioned rent, he is not bound to comt plete his purchase. The plaintiff alleges that his conveyance alone will pass this property to the purchaser, with an apportioned rent of

and [*other purchaser*], and their respective executors, administrators, and assigns; *And* for indemnifying each

OF RENT BY TWO PURCHASERS OF LEASEHOLD, BY CROSS COVENANTS, AND POWERS OF DISTRESS.

£40, as legally and effectually as if a jury had intervened. This is a mere legal question. Let a case be sent for the opinion of a Court of law; *viz.* whether the purchaser of lot 2 would, by the conveyance of the vendor alone, without the concurrence of the lessee, acquire the same rights and remedies against the lessee, in respect of the apportioned rent of £40 therein to be reserved to him, as he would acquire in case no rent were mentioned in such conveyance from the vendor, and the annual rent of £40 were legally apportioned by a jury for that part of the reversion comprised in lot 2?" *Bliss* v. *Collins*, 4 Madd. 229. The defendant having appealed from the decision of his Honour, the Lord Chancellor gave no opinion on the question, whether the apportionment by the landlord would put the purchaser in the same situation as if it had been apportioned by a jury; but thought the Vice Chancellor was quite right in sending it to a court of law. However, his Lordship said, that the courts of law refused to answer speculative questions; and the case must therefore state a conveyance that will raise the question. The case was therefore altered, by stating an actual conveyance to have been made to the purchaser. *Bliss* v. *Collins*, 1 Jac. & Walk. 426. The case was accordingly argued in the Court of King's Bench, in Easter Term, 1822, and the following certificate was sent by the four judges into the Court of Chancery:—"We have heard this case argued by counsel, and are of opinion, that the purchaser of the lot in question, hath not, by the aforesaid conveyance, acquired the same rights and remedies against the lessee, as he would have acquired if the rent had been legally apportioned by a jury; inasmuch as we think that the lessee is not bound by this apportionment, made without his consent, but may dispute the propriety thereof, and cause the rent to be apportioned anew by a jury." *Bliss* v. *Collins*, 1 Dowl. & Ryl. 291. Which certificate, probably, will have the effect of overruling the opinion of Sir Thomas Plumer, Master of the Rolls, on the second exception, in *Walter* v. *Maunde*, 1 Jac. & Walk. 181, that a landlord contracting to sell part of the demised estate, with an apportionment of a specific amount, part of the rent reserved for the whole estate, can make a good title to it, without the consent of the tenant.

A condition is not divisible.

But the condition, giving a right of re-entry for nonpayment of rent and nonperformance of covenants, being entire and not divisible by the severance of any part of the reversion, the condition is wholly destroyed, and no one can enter for a breach of it. *Knight's case*, 5 Co. 55 b. *Dumpor's case*, 4 Co. 120 b.; *Post*, Vol. 4, p. 55; Co. Litt. 215 a.

OF RENT BY TWO PURCHASERS OF LEASEHOLD, BY CROSS COVENANTS, AND POWERS OF DISTRESS.

more effectually apportioning the rent, and indemnifying each other, both purchasers had agreed to enter into the covenants hereinafter contained.

of them, and his executors, administrators, and *assigns, and the premises by him purchased, from the rents, covenants, and agreements, reserved and contained in the said recited indenture of lease, which ought to be paid, kept, done, and performed in respect of the premises purchased by the other of them, it hath been mutually agreed between the said [*purchaser*], and [*other purchaser*], that they should respectively enter into such covenants and agreements as are hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and for and in consideration of the covenants hereinafter contained, on the part of the said [*other purchaser*], his heirs, executors, and administrators, he the said [*purchaser*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, grant, and agree, to and with the said [*other purchaser*], his executors, administrators, and assigns, in manner following, that is to say; that he the said [*purchaser*], his executors, *administrators, and assigns, shall and will from time to time, and at all times hereafter, during the residue yet to come and unexpired of the said term of eighty-eight years and three quarters of a year wanting ten

First Testatum.

Covenant by one purchaser with the other.

to pay his apportioned ground rent;

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And see Mr. Justice Holroyd's argument, *Twynam* v. *Pickard*, 2 Barnew. and Ald. 112.

If the lessee has not consented, the assignee cannot recover more in his action of debt, or in an avowry, than a just apportionment.

Where the rent is apportioned by the reversioner and his assignee of the reversion in part of the lands, without the concurrence of the lessee, the assignee may distrain, or bring his action of debt for the apportioned rent; but he can only recover so much as the jury shall find, upon a just apportionment, to be due. 2 Inst. 504; See Co. Litt. 215 a. 148 a.; Gilb. Rents, 173; 6 Bac. Abr. Gwill. ed. 48. *Rents*, (M) 1 and 3.

The prudent practice.

Therefore, in cases of this kind, it is always desirable that the lessee should, either by the deed conveying the reversion in part of the lands, or by separate deeds, revive the condition of the lease as to the part sold, and as to the part retained by the reversioner, and covenant with each to pay the apportioned rent and perform the covenants, &c. For a form of such a deed, see title DEFEAZANCE. [*post*, Vol. 4, p. 63.] But it has been held, that an action of covenant will lie by the assignee of the reversion of *part* of the demised premises against the lessee, for not repairing. *Twynam* v. *Pickard*, 2 Barnew. & Ald. 105. [See further as to APPORTIONMENT, *post*, Vol. 4, p. 352.]

OF RENT BY TWO PURCHASERS OF LEASEHOLD, BY CROSS COVENANTS, AND POWERS OF DISTRESS.

days, by the said recited indenture of lease granted as aforesaid, well and truly pay, or cause to be paid, unto the said [*lessor*], his executors, administrators, or assigns, or such other person or persons as shall from time to time be entitled to receive the said ground rent or yearly sum of (twelves pounds sixteen shillings), reserved by the said recited indenture of lease, the clear yearly rent or sum of (six pounds eight shillings), (being one moiety or half part of the said ground rent or sum of (twelve pounds sixteen shillings),) when and as the same shall become due and payable, according to the true intent and meaning of the same indenture of lease: AND shall and will *well and truly pay, or cause to be paid, the said increased rent of (fifty) pounds, in case the same shall become payable, and so far as the same is or shall be occasioned by the said [*purchaser*], his executors, administrators, undertenants, or assigns: AND shall and will, during the continuance of the said term, perform, fulfil, and keep all and singular the covenants, stipulations, and agreements, inserted and contained in the said recited indenture of lease, on the part of the said [*lessee*], his executors, administrators, and assigns, to be kept, done, and performed, so far as such covenants, stipulations, and agreements, relate to, or concern, or ought to be kept, done, and performed, in respect, or on account of the said messuage, or tenement and premises, so purchased by him the said [*purchaser*], and comprised in the said firstly recited indenture of assignment, bearing even date herewith: AND of and from a moiety or half part, of the said yearly rent or sum of [twelve pounds sixteen shillings], and of and from the said *increased rent, so far as the same shall be occasioned by the said [*purchaser*], his executors, administrators, undertenants, or assigns; *And* of and from the said covenants, stipulations and agreements, so far as they respectively relate to, or concern, or ought to be kept and observed, in respect, or on account of the said messuage, or tenement and premises, so purchased by the said [*purchaser*] as aforesaid; *And* of and from all and every neglect, breach, or default, which shall or may at any time or times hereafter happen in the payment or or performance thereof respectively, shall and will save, defend, keep harmless and

to pay increased rent, if occasioned by him; [*566]

to perform covenants of the lease, so far as they relate to the premises assigned to him;

for acquittal and indemnity from a moiety of ground rent, and the whole of increased rent, if occasioned by him; [*567]

and from covenants, so far as they relate to the premises assigned to him.

OF RENT BY TWO PURCHASERS OF LEASEHOLD, BY CROSS COVENANTS, AND POWERS OF DISTRESS.

Power of distress for recovery of any sums which the other purchaser shall pay, in respect of the rents and covenants agreed to be paid by covenantor.

indemnified, the said [*other purchaser*], his executors, administrators, and assigns, and his and their lands and tenements, goods and chattels: AND MOREOVER, that in case the said [*other purchaser*], his executors, administrators, or assigns, shall at any time or times hereafter, bear, sustain, be put unto, or pay any sum or sums of money, costs, charges, or expenses, for or upon account, or in respect of the said yearly rent or sum of [six pounds *eight shillings], or of the said increased rent, covenants, and agreements, hereinbefore covenanted and agreed to be paid, kept, done, and performed by the said [*purchaser*], his executors, administrators, and assigns, as aforesaid, or
[*568] any of them; *Then*, and in every such case, and so often as it shall so happen, it shall and may be lawful to and for the said [*other purchaser*], his executors, administrators, and assigns, into and upon the said messuage, tenement and premises so purchased by the said [*purchaser*], and comprised in the said firstly recited indenture of assignment, bearing even date herewith, to enter, and distrain for all and every such sum and sums of money, costs, charges, and expenses, which he the said [*other purchaser*] his executors, administrators, or assigns, shall so pay, bear, sustain, expend, be at, or be put unto: *And* the distress and distresses then and there found, to take, lead, drive, carry away, and impound; and in pound to detain and keep, until the same sum and sums of money, costs, charges, and expenses, and all costs, charges, and expenses whatsoever, sustained, or occasioned by, or attending the making, taking, and keeping any such distress or distresses, shall be fully paid and satisfied: *And* in default of payment thereof, in due time after such distress or distresses shall be made and taken as aforesaid, to appraise, sell, and dispose of such distress or distresses, or any part thereof; or otherwise to act in regard thereto, according
[*569] *to the due course of law, in like manner as in case of distress for nonpayment of rent, reserved upon common leases: *To the intent*, that thereby and therewith, the said [*other purchaser*], his executors, administrators, and assigns, shall and may be fully paid and satisfied all and every such sums and sum of money, costs, charges, and
Second Testatum. expenses as aforesaid. AND THIS INDENTURE FURTHER

OF RENT BY TWO PURCHASERS OF LEASEHOLD, BY CROSS COVENANTS, AND POWERS OF DISTRESS.

WITNESSETH, that in further pursuance of the said recited agreement, and for and in consideration of the covenants hereinbefore contained on the part of the said [*purchaser*] his heirs, executors, and administrators, he the said [*other purchaser*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, grant, and agree, to and with the said [*purchaser*], his executors, administrators, and assigns in manner following; that is to say; That he the said [*other purchaser*], his executors, administrators, and assigns, shall and will, &c. *(the same covenants,* mutatis mutandis, *as before)* (*c*). IN WITNESS, &c.

Similar covenants by the other purchaser with the previous covenantor.

(*c*) The purchaser of the largest lot being entitled to the custody of the lease, and assignments, if any, there should be added a covenant for the production and to permit copies to be taken. See the form, *ante*, p. 26, *mutatis mutandis*, and in ASSIGNMENT of LEASEHOLDS, under title PURCHASE.

Covenant for production of lease, &c.

ARBITRATION.

Arbitration is peculiarly adapted to the settlement of accounts; but doubts are entertained whether the praises bestowed on references to arbitration generally, are well founded.

References to arbitration are sometimes the means of saving expense, and are peculiarly adapted to the settlement of matters of account and mercantile transactions, which are difficult and almost impossible to be adjusted on a trial at law. 3 Bla. Com. 17. Courts of justice, and many of our law writers, have been full of praises on these domestic tribunals; but, unfortunately, persons who refer disputes to arbitration, are not generally so well satisfied with the decision of the arbitrators as they would have been with the decision of a court of justice. For, as arbitrators are frequently suspected of entering on the investigation with minds prejudiced in favour of an opposite party, (and there are not wanting instances of gross misconduct in arbitrators,) and their decisions are unattended with the former solemnity of judicial proceedings the award is too often equally dissatisfactory to all the parties, which leads to endless litigation and expense. The office of an arbitrator between neighbours or friends, is not a desirable office, unless the parties interested are of well constituted minds. And considerable doubts are entertained whether the *eulogia* upon the domestic *forum* of arbitrators are well founded. 6 Ves. 818. This is certain, it is generally preferable to make the reference to a stranger, than to a friend or neighbour.

AFFIDAVIT OF EXECUTING SUBMISSION.

AFFIDAVIT *of the due* EXECUTION *of the* SUBMISSION (*a*), *in order to its being made a Rule of Court.*

IN THE KING'S BENCH,
(COMMON PLEAS, *or*
EXCHEQUER OF PLEAS.)

Affidavit of the execution of a bond.

[*Witness*], of, &c. Gentlemen, maketh oath and saith, that he was present at the time of the signing and

Before a submission can be

(*a*) Before any application is made for an attachment, or to set aside an award, *Harrison* v. *Grundy*, 2 Str. 1178, *Chicot* v. *Lequesne*,

AFFIDAVIT OF EXECUTING SUBMISSION.

*sealing of the (*b*) bond, or obligation, hereunto annexed: *And* that [*obligor*], of, &c. esquire, therein mentioned, did duly sign, seal, and as his act and deed deliver the said (*b*) bond, or obligation, in the presence of this deponent: *And* that the name [*obligor*], set and subscribed to the said (*b*) bond, or obligation, is of the proper handwriting of the said [*obligor*]: *And* that the name [*witness*], set and subscribed as the witness thereto, is of the proper handwriting of this deponent.

SWORN, &c. *ut ante*, p. 361. [*witness.*]

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made a rule of court, one of the witnesses must make an affidavit of the execution;

2 Ves. 316, the submission must be made a rule of court, if not one already, which is done on an affidavit by one of the witnesses of the due execution of the bond or agreement containing the submission; and if he refuse to make it, the court will compel him; for every witness does, by his signing, undertake to prove it when required. *Clark* v. *Elwick*, 1 Str. 1; 10 Mod. 332, S. C.; Barnes, 58; *Weston* v. *Faulkner*, 1 Price, 308; 2 Tidd's Prac. 868, 7th edit.; *Vide post*, 576—7. The submission may be made a rule of court, either before or after the award is made. *Alardes* v. *Campbell*, 1 Barnard. Rep. K. B. 152. *Chicot* v. *Lequesne*, 2 Ves. 317. *Pownall* v. *King*, 6 Ves. 10. *Fetherstone* v. *Cooper*, 9 Ves. 76. *Smith* v. *Symes*, 5 Madd. 74. But where the matter is referred to arbitrators by rule of court, and they make their award, the courts will compel a performance of it as much as if the award were part of the rule; so that a new rule is needless. 1 Salk. 71, pl. 6.

but it may be done either before or after the award is made.

Where the matter is referred by rule of court, a new rule is needless.

(*b*) If the submission be by deed, say,

" deed or writing."

DEED.

AGREEMENT TO REFER DISPUTES TO ONE ARBITRATOR.

*AGREEMENT *on a Purchase (a) in Fee, between the Vendor, and his Son and Grandson, and the Purchaser, to refer to* ONE ARBITRATOR *all existing Disputes, and all other Disputes which may arise before the last Ten Days preceding the Arbitrator's first Sitting.*

ARTICLES OF AGREEMENT indented, made, and entered into the —— day of ——, 18—; BETWEEN [*vendor*], of, &c. of the first part; [*son of vendor*], of, &c. son of the said [*vendor*], of the second part; [*grandson*], of, &c. son of the said [*son*], of the third part; and [*purchaser*], of, &c. of the fourth part,

Recital of agreement, whereby vendor

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WHEREAS by an agreement, indented, bearing date the —— day of ——, 18—, and made or entered *into

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Reference to preceding forms, concerning arbitration.

(*a*) See *Agreement* between the vendors and purchaser of an estate in fee simple, to refer to arbitration or umpirage the question whether certain lands were included in the contract, and what compensation the vendor should receive in consequence of part of the premises being discovered to be of a leasehold instead of a freehold tenure, Vol. 1, p. 128.

See *Agreement*, that equivalent for trifling errors in a contract for purchase, shall be referred, in case of disagreement, to arbitration or umpirage, Vol. 1, p. 144.

See *Trusts*, to transfer to a purchaser so much stock as tithes and lands shall be valued at by two mutual arbitrators, or their umpire, with the purchaser's expenses in consequence of not having the title completed, Vol. 1, p. 121.

See *Agreement*, on purchase of timber, to refer disputes to arbitration or umpirage, Vol. 1, p. 191.

See *Agreement*, on partition, Vol. 1, pp. 217, 222, 228, 235, 241, 245; on exchange, Vol. 1, p. 264.

See *Agreement*, to refer disputes to arbitration on agreement to erect

between the said [*vendor*], of the first part, the said [*son*], of the second part, and the said [*purchaser*], of the third part; The said [*vendor*], for the considerations hereinafter mentioned, covenanted with the said [*purchaser*], on or before the —— day of —— then next, to convey and assure unto and to the use of the said [*purchaser*], his heirs and assigns, freed from all incumbrances, (*except* the several indentures of lease affecting the said premises, and which were referred to in the first schedule thereunder written, and the land-tax, and the usual parliamentary and parochial rates and taxes, and the high, or quit rent, payable thereout, the then amount of which said land-tax, and other rates, and high, or quit rent, was specified in the second schedule thereunder written,) *All those*, the manors or lordships of —— and ——: And all bartons, messuages, farms, lands, woods and hereditaments, rights, privileges, and appurtenances whatsoever, thereunto belonging: *And also* a messuage, barton, and farm called ——, lying in the parish of ——; and a messuage and farm called ——, in the parishes of —— and ——; *All* which manors, farms, lands, and hereditaments, are therein mentioned to contain together by estimation —— thousand —— hundred and —— acres (more or less): *And* all other the messuages, lands, and hereditaments, comprised in the schedule thereunder written; *except* the advowson of the rectory or parish church of —— aforesaid, &c. (*And reciting* divers other agreements between the parties, and awards, which it was understood between them should be null and void.) AND WHEREAS several disputes and differences exist between the said [*vendor*] and [*son*] respectively, and the said [*purchaser*]: and between the *said [*son*] and [*grandson*] respectively, and the said [*purchaser*], respecting the several agreements aforesaid, and otherwise relating to the premises. NOW THESE PRESENTS WITNESS, that it is hereby covenanted

AGREEMENT TO REFER DISPUTES TO ONE ARBITRATOR.

covenanted with purchaser to convey to him in fee free from incumbrances, (except leases, taxes, and quit rent specified in schedule),

parcels,

and all other messuages, &c.

except an advowson.

Recital that disputes existed between the parties relating to the premises.

[*574]

Testatum.

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buildings, Vol. 1, p. 280; to build a bridge, p. 308; to build a ship, p. 228.

See arbitration clause, in an *Agreement* between manufacturers and a factor, Vol. 1, p. 298.

See further, INDEX TO THE PRECEDENTS, title ARBITRATION.

AGREEMENT TO REFER DISPUTES TO ONE ARBITRATOR.

and agreed, by and between the said several parties hereto, as follows; that is to say: *That* all disputes (*b*) and differences, which exist between the said parties respectively, or any of them; and also all other disputes and differences that may, at any time or times, before the last ten days immediately preceding the day which shall be appointed by the arbitrator hereinafter named, for his first sitting in the arbitration to be made in pursuance of these presents, exist between the same parties, or any of them, or any matters and things relating to, or arising out of the several hereinbefore recited agreements, or any of them, shall be referred to the arbitration of [*arbitrator*]: AND the award of the said [*arbitrator*], if made in writing under his hand and seal, ready to be delivered to the parties hereto on or before the —— day of —— now next, or on or before such other day, not beyond the —— day of ——, as the said arbitrator shall by writing under his hand from time to time appoint, shall be binding and conclusive on all the said parties: AND that, for further and better enforcing the performance and observance of such award, the reference or arbitration for or in respect of the same shall be made a rule of his Majesty's Court of King's Bench at Westminster, according to the statute in that case made and provided (*c*). AND further, that the

Agreement that existing disputes,

and all other disputes which may arise before the last ten days preceding the arbitrator's first sitting, shall be referred to him.

The award of arbitrator, if made before a certain day, or before an enlarged limited time, to be binding.

Reference to be made a rule of court.

Parties to produce to arbitrator all deeds, &c.

(*b*) In cases of this kind it is better to make the reference a general one, as above.

To an action of debt on bond for not performing an award, or to an action on the award, the defendant cannot *plead* the misconduct of the arbitrators;

neither can he give evidence of it on "he doth not owe," nor on "no such award."

(*c*) It seems that to an action of debt on bond for not performing an award, or to an action on the award itself, the defendant cannot *plead* collusion, or other misconduct of the arbitrators, in avoidance of the award. Wms. n. 1 Saund. 327 *a*. For there seems to be no case or *dictum* where a plea of this sort has been held to be pleadable, nor a precedent of such a plea to be found in any of the books of entries. But on the contrary, in *Wells* v. *Maccarmick*, 2 Wils. 148, it is said that there is no case where this matter has ever been pleaded, S. P. *Braddick* v. *Thompson*, 8 East, 344; *Grazebrook* v. *Davis*, 5 Barn. & Cress. 534. Neither can the defendant give evidence of it on *nil debet*, pleaded to debt on the award, 2 Wils. 148: nor on the plea of *nul tiel agard*, pleaded to debt on bond. *Praed* v. *Duchess of Cumberland*, 4 Durnf. and East, 538. 2 Saund. 84 b, 84 c. For it does not seem necessary for the plaintiff to prove any thing else on the issue of *nul tiel agard*, but execution of the award within the period limited to the arbi-

On the issue "no such

*said parties hereto, and each and every of them, shall and will produce and show forth, to the said arbitrator, all such

AGREEMENT TO REFER DISPUTES TO ONE ARBITRATOR.

trators to make their award; and the defendant on such proof may take advantage of some material variance between the award so produced in evidence, and that which is set forth in the replication, but cannot go into objections to the award in point of law. *Foreland* v. *Marygold*, 1 Salk. 72.

award," the plaintiff need only prove execution of the award within the period limited;

the defendant may take advantage of a material variance, but cannot go into objections to the award in point of law.

Nor could an award, where the submission was by bond or other writing, or by parol, be in any other manner set aside at common law for the misbehaviour of the arbitrators, but the remedy was by a bill in equity. *Veale* v. *Warner*, 1 Saund. 327; *Greenhill* v. *Church*, 3 Ch. Rep. 88; 2 Vern. 101, pl. 95; *Earle* v. *Stocker*, 2 Vern. 251. But where the submission to arbitration was by rule of court, which was often the case, the conduct of the arbitrators and of the parties to the submission, might, as it still may be, examined into; and if on examination it appeared that the arbitrators had been partial and unjust, or had mistaken the law, the court would not enforce a performance of the award. *Anon.* 1 Salk. 71, pl. 4; *Morris* v. *Reynolds*, and *Davila* v. *Almanza*, 1 Salk. 73; *Forster* v. *Brunetti*, 1 Salk. 83; *Darbyshire* v. *Cannon*, 1 Mod. 21; *Lucas* v. *Wilson*, 2 Burr. 701. If, however, the conduct of the arbitrators was not, or could not be successfully impeached, the Court of King's Bench, in the reign of Charles II when Kelynge was Chief Justice, began to compel a performance of the award by *attachment*, as for a contempt of a rule of court. *Forster* v. *Brunetti*, 1 Salk. 83; *Stiles* v. *Triste*, 1 Sid. 54.† It afterwards became the common practice to issue out an attachment for not performing an award. And it was found by experience, that the enforcing of the performance of awards by attachment had contributed much to the ease of the subject, as is recited in the preamble of the following statute, 9 & 10 Wm. III. c. 15, intituled,

At common law an award could not be set aside for the misbehaviour of the arbitrators.

Where the submission was by rule of court, if the arbitrators had been partial, or had mistaken the law, the court would not, nor will they now, enforce a performance of the award.

If the conduct of the arbitrators was not impeached, the Court of King's Bench, in the reign of Cha. II. compelled a performance of the award by attachment.

It afterwards

"AN ACT *for determining Differences by* Arbitration."

"WHEREAS it hath been found by experience, that references made by rule of court have contributed much to the ease of the subject in the

[† But the conduct of the arbitrators forms no ground for resisting a motion for an attachment, which can only be done for some defect apparent on the award itself. *Holland* v. *Berks*, 6 D. & R. 161; *Brazier* v. *Bryant*, 10 J. B. Moore, 587. In order to impeach an award for partial, corrupt, or improper conduct in the arbitrators, application should be made to the court to set it aside.]

AGREEMENT TO REFER DISPUTES TO ONE ARBITRATOR.

deeds, evidences, and writings, relative to the premises in question, as shall be in the possession or power of the

became common to issue an attachment for not performing an award, which ultimately led to the beneficial statute, 9 & 10 Wm. III. c. 15.

determining of controversies, because the parties become thereby obliged to submit to the award of the arbitrators, under the penalty of imprisonment for their contempt in case they refuse submission: Now, for promoting trade, and rendering the awards of arbitrators the more effectual in all cases for the final determination of controversies referred to them by merchants and traders, or others, concerning matters of account or trade, or other matters; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in Parliament assembled, and by authority of the same, that from and after the eleventh day of May, which shall be in the year of our Lord one thousand six hundred and ninety-eight, it

Merchants and traders, &c. desiring to end controversies by arbitration, may agree that their submission shall be made a rule of court.

shall and may be lawful for all merchants and traders, and others desiring to end any controversy, suit, or quarrel, controversies, suits, or quarrels, for which there is no other remedy but by personal action or suit in equity, by arbitration to agree that their submission of their suit to the award or umpirage of any person or persons should be made a rule of any of his Majesty's courts of record which the parties shall choose, and to insert such their agreement in their submission, or the condition of the bond or promise whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons; which agreement being so made and inserted in their submission

Agreement so made, to be inserted in their submission, &c.

or promise, or condition of their respective bonds, shall or may, upon producing an affidavit thereof, made by the witnesses thereunto, or any one of them, in the court of which the same is agreed to be made a rule, and reading and filing the said affidavit in court, be entered of record in such court, and a rule shall thereupon be made by the said court, that the parties shall submit to and finally be concluded by the arbitration or umpirage which shall be made concerning them by the arbitrators or umpire, pursuant to such submission; and in case of disobedience to such arbitration or umpirage, the party neglecting or refusing to perform and execute the same, or any part thereof, shall be subject to all the penalties of contemning a rule of court, when he is a suitor or defendant in such court, and the court on motion shall issue process accordingly, which process shall not be stopped or delayed in its execution by any order, rule, command, or process of any other court, either of law or equity, unless it shall be made appear on oath to such court, that the arbitrators or umpire misbehaved themselves, and that such award, arbitration, or umpirage, was procured by corruption, or other undue means.

Parties to be finally concluded by such arbitration.

In case of disobedience, party neglecting subject to penalty, &c.

unless arbitrators misbehave themselves.

Corrupt arbi-

" II. And be it further enacted, by the authority aforesaid, that any

said parties, or any of them, or of any other person or persons under the influence or control of the said parties, AGREEMENT TO REFER DISPUTES TO ONE ARBITRATOR.

arbitration or umpirage procured by corruption or undue means shall be judged and esteemed void and of none effect, and accordingly be set aside by any court of law or equity, so as complaint of such corruption or undue practice be made in the court where the rule is made for submission to such arbitration or umpirage, before the last day of the next term after such arbitration or umpirage made and published to the parties; any thing in this act contained to the contrary notwithstanding." tration void, and may be set aside, &c.

The first section of the statute enables parties to make a submission to arbitration by bond, or other writing, a rule of court,† and thereby puts such submission on the same footing with those by rule of court. This act is held to be only declaratory of what the law was before, in cases where there was a cause depending. *Lucas* v. *Wilson*, 2 Burr. 701. By the second clause of the statute, an award may be set aside for the corruption of the arbitrators, if an application be made to the court for that purpose on the last day of the next term after making the award. Upon this clause, the court cannot set aside an award made in pursuance of the statute, on any other ground but fraud or corruption in the arbitrators. *Anderson* v. *Coxeter*, 1 Str. 301. But though the court cannot *set aside* the award upon any other ground, yet if there be any illegality or defect on the face of it, the court will refuse to enforce the award by attachment, and will leave the party to an action on the bond, or on the award itself. *Hutchins* v. *Hutchins*, Andr. 297. For it is discretionary in the court, whether they will enforce the award by process of contempt or not. *Hales* v. *Taylor*, 1 Str. 695. S. P. *Pedley* v. *Goddard*, 7 Durnf. & East, 73. It is held, that the statute does not give the courts authority to make a *verbal* submission a rule of court; *Ansell* v. *Evans*, 7 Durnf. & East, 1; ——— v. *Mills*, 17 Ves. 421; [*Godfrey* v. *Wade*, 6 J. B. Moore, 488;] and therefore an award under a *parol* submission can only be set aside for the misbehaviour of the arbitrators by a bill in equity. *Ante*, p. 575. So it is held, that the statute does not apply to submissions by *rule of Court*, or by order of *nisi prius*; therefore it has been held, that it is not necessary in such case to apply to set aside the award within the time limited by the statute. [*Dubois* v. *Medlycott*, Barnes, 45]; *Lucas* v. *Wilson*, 2 Burr. 701; *Synge* v. *Jervoise*, 8 East, 465. Which three kinds of submission remain as at common law. But in *Rogers* v. *Dallimore*, 1 Marsh. Rep. 471. S. C. 6 Taunt. 111, the Court of Common Pleas said, that the limi- The act puts submissions to rule of court on the same footing as those by rule of court. As to setting aside awards under the statute.

[† Which may be done in vacation, see the matter of *Taylor*, 5 Barn. & Ald. 217.]

AGREEMENT TO REFER DISPUTES TO ONE ARBITRATOR.

or any of them, So as the said arbitrator may examine and inspect or peruse the same, for the purpose of enabling

tation of the act applied only to cases where an original authority was given by it: that where a cause was referred to arbitration, the court still reserved a superintending authority over the award, and that it was discretionary with them to afford relief, even though the time limited by the act of Parliament had elapsed. But, in the exercise of this discretion, the court declared that they should, in general, prescribe to themselves the same rule as the statute has prescribed to them in certain cases: and that, although under particular circumstances they might think proper to interfere, yet that they by no means intended to hold out to parties, that application to set aside awards, where the submission had not been entered into by bond, might be made at any distance of time. So where the submission to arbitration is made a rule of court, pursuant to the statute, though no motion can be made to set aside the award for extrinsic matter, that is, for fraud or corruption in the arbitrators, after the time limited by the act; or for objections appearing on the face of it, (see *Lowndes* v. *Lowndes*, 1 East, 276,) yet an application for an attachment for not performing the award may be resisted *at any time* for defects appearing on the face of the award itself. *Pedley* v. *Goddard*, 7 Durnf. & East, 78, where the case of *Hutchins* v. *Hutchins*, in Andr. 297, is recognised. And in neither case, whether the submission be originally by rule of court, or by bond, and afterwards made such, will the court enter into the merits of the award, and examine into the reasonableness and justice of it; *Lucas* v. *Wilson*, 2 Burr. 701; unless it appears manifestly from the merits, that the arbitrators have acted dishonestly and corruptly. Thus, on motion respecting an award of commissioners under an inclosure act, the Court of King's Bench said: "We may punish upon this, if there be any corruption; or enforce its execution by *mandamus;* but we are not to interpret or set aside these awards upon complaint of their obscurity," &c. Case on the *Over-Kellet* Inclosure Act, H. 38 Geo. 3, K. B. 2 Tidd, 875, 7th edit. [A party by accepting the costs of the reference and award precludes himself from moving to set it aside. *Kennard* v. *Harris*, 4 Dowl. & Ryl. 272; *S.C.* 2 Barn. & Cres. 801. And where, subsequently to the expiration of the arbitrator's authority, the attorney of one of the parties wrote a letter to the arbitrator urging him to reconsider some points connected with the reference, which he refused; it was held, that the party was precluded from taking any objection on the ground of the power of the arbitrator having expired. *The King* v. *Hill*, 7 Pri. 636.

Where the submission is made a rule of court, an application for an attachment for not performing the award may be resisted at any time, for defects appearing on the face of it.

Whether the submission be originally by rule of court or by bond, and afterwards made such, the court will not enter into the merits of the award, unless corruption appears.

So where the parties to a reference submit to be examined by an umpire chosen by arbitrators, they cannot afterwards object to the want of

AGREEMENT TO REFER DISPUTES TO ONE ARBITRATOR.

*him to make the said award: And that the said parties hereto, and each and every of them shall and will so far as in them respectively lies, furnish the said arbitrator with such other evidences, proofs, and documents, and do all such other acts and things, for better enabling him to make the said award, as the said arbitrator shall require: And that the said arbitrator shall, for the purpose of enabling him to make the said award, be at liberty to go into *parol as well as written evidence; and to examine the said parties in difference, or any or either of them, and such other witnesses as he shall think proper, on oath; the witnesses to be sworn before a Judge, or a Master in Chancery, or a Master Extraordinary in Chancery: And further, that the solicitor of each of the said respective parties shall state in writing all the matters and things intended to be referred by his client to the said arbitrator, *and shall, at least ten days before the day appointed by the said arbitrator for his first sitting on the said arbitration, deliver a copy of such statement to the solicitor of each of the said other parties respectively; and only those matters and things which shall be comprehended in such respective statements shall be taken into consideration by the said arbitrator. And that the said arbitrator shall give at least —— days previous notice to the solicitor of

and furnish other proofs, &c.

Arbitrator to be at liberty to go into parol as well as written evidence;

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and to examine parties and witnesses;

the witnesses to be sworn before a Judge or a Master in Chancery.

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The solicitor of each party to state in writing all the matters intended to be referred by his client, and ten days before the first sitting to deliver a copy thereof to the solicitor of each of the other parties;

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authority in the arbitrators to choose an umpire. *Matson* v. *Trower*, 1 Ry. & Moo. 17.]

Mr. Tidd says, "this statute being confined to courts of *record*, does not, it seems, extend to the Court of Chancery." 2 Tidd's Prac. 853, 7th edit. But although the Court of Chancery, in regard to its *equitable* jurisdiction, is not a court of record, yet, so far as concerns its *common law* jurisdiction, it is a court of record; 2 Madd. Chan. 2d edit. 712; and such submissions to arbitration under the statute have been made rules of the court; and on those submissions, attachments have issued against the parties, for not performing the award. *Webster* v. *Bishop*, 2 Vern. 444. *Spettigue* v. *Carpenter*, 3 P. W. 362. *Pownall* v. *King*, 6 Ves. 10. [*Smith* v. *Symes*, 5 Madd. 74.] See also *Knox* v. *Simmonds*, 3 Bro. C. C. 359. Independently of these cases, it is presumed, that the second section of the act removes every doubt on the subject. [In *Auriol* v. *Smith*, 1 Turn. 121, Lord Eldon decided, "that a court of equity was precluded from entertaining a suit which had been made a rule of court under the statute, after the time allowed by the statute had expired."]

Submissions to arbitration under the statute may be made a rule of the Court of Chancery.

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*each of the said respective parties, of the day on which he intends to hold his first sitting on the said arbitration: And that all costs and charges attending the said arbitration shall be in the discretion of the said arbitrator, and shall be paid and satisfied pursuant to his award. And lastly, that neither of the said parties shall bring any *action or suit against the other of them, in relation to the premises, or against the arbitrator (*d*). In witness, &c.

and only the matters comprehended in such statements to be taken into consideration.

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Arbitrator to give notice of his first sitting. Costs to be in the discretion of the arbitrator. Neither of the parties to bring any action or suit against the other.

Where the reference is by covenant, a penalty seems prudent.

(*d*) When the reference is by mutual covenants or agreements, it seems generally prudent to have a *nomine pœnæ*. See the form, Vol. 1, p. 225. For then, if either of the parties should revoke the power of the arbitrators, the penalty would become forfeited, and the other party might take the benefit thereof. But if there be only a covenant, he cannot by revoking the authority relieve himself from an action of covenant for not performing the award. See 2 Tidd's Prac. 856, 7th ed.

[A submission by deed cannot be made a rule of court after it has been revoked. *King* v. *Joseph*, 5 Taunt. 452. But it is otherwise, to a certain extent, as to a reference under a judge's order, which may be made a rule of court for the purpose of enforcing the payment of costs notwithstanding the revocation. But where a judge's order provided that if either party should, by affected delay or otherwise, wilfully prevent the arbitrator from making an award, he or they should pay such costs to the other as the court shall think reasonable and just; and where the defendant, under legal advice, revoked the authority of the arbitrators, because she could not procure the attendance of several material witnesses, the court refused to direct her to pay costs, this not being "affected delay," within the meaning of the rule. *Aston* v. *George*, 2 Barn. & Ald. 395. (To revoke the submission in such a case seems to be the party's only course.) However for other purposes, than the payment of costs, an award cannot be enforced, if made after revocation, though the reference was made under a judge's order, which was made a rule of court subsequently to such revocation. *Clapham* v. *Higham*, 1 Bing. 17.

For what purposes an award is operative after revocation of arbitrator's authority.

And an action, for the nonpayment of a sum of money awarded, may be answered by the plea that the defendant before the award had by deed revoked the authority of the arbitrators; for though this admits a breach of covenant, which forms a distinct ground of action against the defendant, the plaintiff cannot recover for such breach in an action to enforce the payment of the money awarded. *Marsh* v. *Bulteel*, 5 Barn. & Ald. 507. *S. C.* 1 Dowl. & Ryl. 106. *Et vide post*, Vol. 3, p. 16.]

It has been held, that where an arbitrator paid a sum of money in pursuance of his award to a person who had previously committed a secret act of bankruptcy, he (the arbitrator) was not liable to pay it over again to the assignees. *Tope* v. *Hockin*, 7 Barn. & Cress. 101.]

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Arbitrator paying money to a person who had committed a secret act of bankruptcy, not liable.

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AGREEMENT *to refer to* THREE ARBITRATORS *Matters of Account in dispute between a Creditor and Two Debtors, where the Dealings were between the Creditor and One of the Debtors to a certain Time, and from that Time between the Creditor and both Debtors; and where a Balance is admitted to be due; with an Agreement to suspend an action at Law, and a Bill and Cross Bill in Equity, until the Time for making the Award.*

AGREEMENT TO REFER MATTERS OF ACCOUNT TO THREE, AND TO SUSPEND ACTIONS AND SUITS.

IN THE EXCHEQUER.

Between { [*A. B.*] and [*C. D.*] Plaintiffs, and [*E. F.*] . . . . . Defendant, } Title of bill.

and

Between { the above named [*E. F.*] Plaintiff, and the above named [*A. B.*] and [*C. D.*], Defendants, } Title of cross bill.

WHEREAS there have been divers dealings and transactions between the above named [*E. F.*] and [*A. B.*], before and since the —— day of ——, 18—, on which there was due and owing from the said [*A. B.*] to the said [*E. F.*], the sum of £——; and there have been also divers dealings and transactions between the said [*E. F.*] and the said [*A. B.*] and [*C. D.*], since the said —— day of ——, 18—; and several questions, disputes, Recital of dealings between one of the parties and the other, to a certain time; and dealings between one of the parties and the two others, from that time; and that dis-

AGREEMENT TO REFER MATTERS OF ACCOUNT TO THREE, AND TO SUSPEND ACTIONS AND SUITS.

and controversies have arisen, and are subsisting, not only between the said [*E. F.*] and [*A. B.*], but also between the said [*E. F.*] and the said [*A. B.*] and [*C. D.*]: *And* there is now depending an action at law, wherein the said [*E. F.*] is plaintiff, and the said [*A. B.*] and [*C. D.*] are defendants; *and two suits are also depending in his Majesty's Court of Exchequer, at Westminster, in one of which the said [*A. B.*] and [*C. D.*] are plaintiffs, and the said [*E. F.*] is defendant; and in the other of the said suits the said [*E. F.*] is plaintiff, and the said [*A. B.*] and [*C. D.*] are defendants, touching the said dealings and transactions, and the accounts relating thereto. Now for the putting an end to the said actions and suits, and for divers other considerations us thereunto moving, *It is hereby mutually agreed* by and between the said [*E. F.*], [*A. B.*], and [*C. D.*], to refer all questions, disputes, and controversies, in any wise relating to, or touching, or concerning such dealings or transactions, as well between the said [*E. F.*] and the said [*A. B.*] as between the said [*E. F.*] and the said [*A. B.*] and [*C. D.*], and the accounts relating thereto, to the award, order, arbitration, end, and determination, of [*three arbitrators*], of, &c. arbitrators, indifferently (*a*) named and chosen, as well by and on the part and behalf of the said [*E. F.*], as on the part and behalf of the said [*A. B.*], and also on the part and behalf of the said [*A. B.*], and [*C. D.*]. *And it is hereby expressly agreed*, that notwithstanding the bond for —— thousand pounds, in the pleadings mentioned, the said arbitrators are to be at liberty to investigate the

putes had arisen between them; and that an action is depending at law, [*582] and two suits in the Court of Exchequer, touching the said dealings.

Testatum.

Agreement to refer the disputes to three arbitrators.

Notwithstanding a bond for a specific amount, the arbitrators to be at liberty to in-

An arbitrator should act indifferently, and not consider himself as the agent of the person appointing him.

(*a*) Where arbitrators are named, one by each party, they ought not to consider themselves as solely representing the persons by whom they were respectively nominated, and as the advocates of their causes, but as called upon to execute a joint trust; and they are bound to look with equal accuracy to the interests of each party. Caldwell, 51. Lord Thurlow has expressed himself in strong terms on this point. "It is not uncommon," says he, "for a person appointed arbitrator, to consider himself as agent for the person appointing him. How that is so common, I wonder; for it is against good faith. The bond says, he is an indifferent person; and he breaks a most solemn engagement in considering himself otherwise." *Calcraft* v. *Roebuck*, 1 Ves. jun. 262. See also *Fetherstone* v. *Cooper*, 9 Ves. 68.

whole of the accounts, dealings, and transactions between the said parties, and to award a greater or less sum to be due from the said [*A. B.*] and [*C. D.*], or either of them, jointly or separately, to the said [*E. F.*], on the day of the date of the said bond, *and to determine the true balance or balances between the said parties, upon the whole of the accounts, dealings, and transactions, between the said parties; *And* shall be at liberty to appoint how, and in what proportions such balances shall be paid and, by whom, and to whom: *And* also to direct the said action to be discontinued, and the said suits to be dismissed, with or without costs; but if with costs, then to ascertain whether such costs are to be paid, as between attorney and client, or as between party and party; and when, and by whom, and to whom to be paid. And *the said parties do hereby severally and respectively agree*, well and truly to stand to, obey, abide, perform, observe, and keep the award, order, arbitrament, final end, and determination, of the said arbitrators, or any two of them, as well touching and concerning the said several matters hereinbefore particularly mentioned, as of and concerning all manner of other action or actions, cause or causes of actions, suits, bills bonds, specialties, judgments, executions, extents, accounts, debts, dues, sum and sums of money, quarrels, controversies, trespasses, claims, and demands whatsoever, both at law and in equity, or otherwise howsoever, which, at any time or times heretofore, have been had, made, done, or suffered, by or between the said parties, or any of them; *So* as not to question the balance before stated to be due from the said [*A. B.*] to the said [*E. F.*], on the —— day of ——, 18—; *And so* as the said award be made in writing, under the hands of the said arbitrators, or any two of them, and ready to be delivered (*b*) to

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vestigate the accounts, and to award a greater or less sum:

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and to appoint how balances shall be paid;

and to direct action to be discontinued and suit dismissed, with or without costs.

Agreement to perform award, as well concerning the matters before mentioned as concerning all other actions, suits, &c.

so as not to question the balance stated to be due to one of the parties;

and so as the award be made by a certain day.

(*b*) Where the condition of a bond or other submission is in words to the above effect, if the award be actually made on the day limited, it is then ready to be delivered. *Bradsey* v. *Clyston*, Cro. Car. 541. *Robinson* v. *Calwood*, 6 Mod. 82. 2 Ld. Raym. 989. S. C. *Markes* v. *Marryatt*, 1 Lutw. 524 (2). 1 Ld. Raym. 114. S. C. *Rowsby* v. *Manning*, 3 Mod. 331. And therefore on the issue, *nul tiel agard*, it is not

If the award be made on the day limited, it is then ready to be delivered.

When the

AGREEMENT TO REFER MATTERS OF ACCOUNT TO THREE, AND TO SUSPEND ACTIONS AND SUITS.

the said parties, or such of *them as shall desire the same, on or before the —— day of —— now next ensuing, *And it is hereby further mutually agreed*, that no action, suit, or other proceeding at law, or in equity, shall be brought, commenced, or instituted against the said arbitrators, any or either of them, for or by reason of any award to be made by them, under this reference; but this agreement shall and may be pleaded in bar to any such suit or action. AND FURTHER, that the said arbitrators shall have power to examine the parties, and their witnesses, on oath or affirmation, and call for books and papers in the possession or power of either of the parties; which are to be produced on oath and affirmation; and to take the depositions of the parties and their witnesses in writing, which are to be signed by them respectively, or otherwise not to be admitted as evidence: AND that each of the said parties shall in the meantime be at liberty to inspect, peruse, and have copies of all, any, or

No action or suit to be commenced against the arbitrators.

Arbitrators to have power to examine the parties, &c. on oath; and to call for books and papers.

Each party to be at liberty to inspect books, &c. in the cus-

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award is made, the law implies it is then ready to be delivered.

necessary for the plaintiff to aver in his replication, that the award was ready to be delivered, but only to state that the arbitrators *made* their award on or before the time limited, and to set forth the award. *Joyce* v. *Haines*, Hard. 399. 3 Vin. Abr. 117, pl. 22, *sed vide* 2 Freem. 415, 467. However, if either of the parties do, on the last day, request the arbitrators to deliver the award to him, and they neglect or refuse to do so, the bond is void. *Rowsby* v. *Manning*, 3 Mod. 331, recognized in *Markes* v. *Marryatt*, 1 Lutw. 524. S. P. *Oates* v. *Bromhill*, 6 Mod. 176. So in *Wilson* v. *Wilson*, sittings in London after Hilary Term, 1796, before Chief Justice Eyre, cited Wms. 1 Saund. 327 *b*, where in debt on bond, conditioned for performance of an award in terms similar to the above form, the defendant (among other pleas) pleaded, that the arbitrators did make their award on the day limited in the condition, and that he on that day required them to deliver the award to him, but they neglected and refused so to do: and issue being joined thereon, it appeared in evidence that the arbitrators had made their award on the day, but, because it was not stamped, refused to deliver it to the defendant according to his request: and upon this evidence, the jury, under the direction of his lordship, who thought it an extremely hard case, found that the arbitrators had not complied with the condition of the bond, and gave a verdict for the defendant; and the plaintiff's counsel, being satisfied both of the law and fact, acquiesced. [*Vide post*, p. 628, (*b*), as to a submission where no time is limited.]

If either of the parties on the last day request the arbitrators to deliver the award, and they neglect to do so, the bond is void.

AGREEMENT TO REFER MATTERS OF ACCOUNT TO THREE, AND TO SUSPEND ACTIONS AND SUITS.

either of the books, papers, and writings in the hands, custody, or power of the other or others of them the said parties respectively, touching or relating to the matters in reference: AND if either party shall, in the opinion of the arbitrators, or the majority of them, without good and sufficient cause, to be ascertained on oath or affirmation, if required, to their satisfaction, by non-attendance, or non-production of books, papers, or writings, or otherwise delay or impede, or attempt to delay or impede, the progress of the said arbitrators, in *making their said award, the arbitrators, or the majority of them, shall be at liberty to proceed *ex parte*, after two days clear notice to the party or parties causing such delay or impediment as aforesaid, to be left at his or their dwelling-house or counting-house: AND if the arbitrators, or the majority of them, shall think it necessary, they shall be at liberty, and are hereby authorized, to appoint an accountant to their assistance; the expense of such accountant to be paid, one half by the said [*E. F.*], and the other half by the said [*A. B.*] and [*C. D.*]; such accountant to be sworn to the truth of the account or statement to be made out by him. AND *it is hereby agreed* that all proceedings at law, or in equity, shall be stayed until the [*the day on which the award is to be made*] day of —— next ensuing; when, if no award shall be made, or the time for making the same shall not be enlarged by mutual consent, each of the parties to be at liberty to proceed at law or in equity, as they or either of them shall be advised, or can or may do according to the course of the courts, and the injunction obtained by the said [*A. B.*] and [*C. D.*], to have its full effect, till the same shall be dissolved; but not to extend to prevent any legal proceedings that may become necessary to recover the bills hereinafter mentioned (*c*). AND *it is hereby agreed* by all the parties,

tody of the others.

If either of the parties should delay or impede the arbitrators, they may proceed *ex parte*, after notice.

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Arbitrators to be at liberty to employ an accountant.

All proceedings at law and in equity to be stayed until the day on which the award is to be made;

but not to prevent any legal proceedings to recover the bills aftermentioned.

Expense of the arbitration and award to be paid, one half by one party, and the other half by the two partners.

(*c*) If it be the agreement, that in case of the death of either of the arbitrators before the award, the party appointing him shall have power to appoint another in his stead; see the form, Vol. 1. p. 136, 246. And see *Harper* v. *Abrahams*, 4 Moore, 3.

Power to appoint new arbitrators in case of death before award.

[Where after an order of reference in a suit the arbitrators die, or decline to proceed, the suit is not determined, but may be prosecuted

Effect of death of arbitrator.

AGREEMENT TO REFER MATTERS OF ACCOUNT TO THREE, AND TO SUSPEND ACTIONS AND SUITS.

that the expense of the arbitration and award shall be paid, one half by the said [*E. F.*], and the other half by

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Death of parties revokes authority of arbitration.

as if no reference had been made. *Crawshay* v. *Collins*, 3 Swanst. 90. The death of either of the parties is a revocation of the arbitrator's authority, and an award afterwards made is therefore void. *Touissant* v. *Hartop*, 7 Taunt. 571; *Potts* v. *Ward*, 1 Marsh. 366; *Blundell* v. *Brettargh*, 17 Ves. 232; *Cooper* v. *Johnson*, 2 Barn. & Ald. 394; *Edmunds* v. *Cox*, 2 Chit. Rep. 432. But it is now clear that this effect may be prevented by express stipulation; for which purpose the following clause may be inserted in the deed of submission:—

Declaration and agreement that the death of either of the parties shall not affect the reference.

"And *it is hereby further declared and agreed*, that the submission hereby made shall not be defeated or affected by the death of the said parties, or either of them, pending the same; but the said reference shall or may be proceeded in, and the matters in difference determined, in the same manner as if the award of the said arbitrators had been made and delivered in the lifetime of the party or parties so dying; and the executor or administrator, executors or administrators, of the party or parties so dying shall be, and be deemed and considered to be, to all intents and purposes, a party or parties to the reference or submission hereby made; any rule of law or equity to the contrary notwithstanding."

What expressions have been held to make submission binding on the representatives of a deceased party.

In the late case of *Macdougall* v. *Robertson*, 1 Moore & Payne, 156; *S. C.* 2 You. & Jerv. 11; the deed of reference provided, "that the submission should not vacate or expire through the decease or insolvency of either of the parties, but should notwithstanding such event be proceeded in, and the matters in issue determined in the same manner as if such event had not occurred;" and it was held, that the award made after the death of one of the parties was binding. See also *Dowse* v. *Coxe*, 10 J. B. Moore, 272, where a clause of a similar effect was inserted in an order of reference in Chancery, and received a similar construction. And where an order of reference at Nisi Prius empowered the arbitrator to determine all matters in difference between the parties, so as the arbitrator should publish it ready to be delivered to the parties, *or if either of them should be dead before the making of the award, then to their personal representatives* before a certain day; it was held, that this amounted to a declaration that the authority of the arbitrators should not be determined by the death of the parties. *Clarke* v. *Crofts*, 4 Bing. 143. But the circumstance of each party covenanting for himself, his *heirs*, &c. to perform the award, does not make it binding on his representatives, if not made in the lifetime of the parties. And

the said [*A. B.*] and [*C. D.*] AND the said [*A. B.*] and [*C. D.*] do hereby agree, immediately after the agreement or submission to reference shall be made a rule or order of his Majesty's Court of Exchequer, to pay to the said [*E. F.*], the sum of [150*l.*] in part of the debt admitted to be due to the said [*E. F.*], (such payment to be made in bills of exchange, which have been inspected and approved by the said [*E. F.*].) AND the said [*E. F.*] doth hereby agree, that if no award shall be made within the time hereinbefore mentioned and limited, or within the period to which the time for making such award shall *by the consent of the parties be extended, that he the said [*E. F.*], his executors or administrators, shall and will, within one week after the expiration of the time for making such award, pay unto the hands of the proper officer of the said Court of Exchequer, the said sum of [150*l.*] or such part thereof as shall have come to his hands, or to the hands of any person on his account, and for his use; and shall and will deliver up such of the said bills as shall be then unpaid, into the hands of —— and ——, attornies, who shall be and are hereby authorized to recover the payment of the same from all persons liable thereto; and who shall pay the same into the hands of the said officer of the said court. AND *it is hereby agreed*

AGREEMENT TO REFER MATTERS OF ACCOUNT TO THREE, AND TO SUSPEND ACTIONS AND SUITS.

Agreement by the two partners, that immediately after the submission is made a rule of court to pay to the other party a sum in part of a debt admitted: such payment to be made in bills of exchange.

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Agreement by the other party, that if no award be made within the time limited, he will, within one week afterwards, pay into the Court of Exchequer the sum, or such part thereof as shall be received; and deliver bills of exchange unpaid to attornies, to recover payment thereof, and pay same into the Court of Exchequer.

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therefore, where in a contract for resale of lands, the vendor covenanted with the purchaser, his heirs, executors, and administrators, that he, his heirs, executors, administrators, and assigns, would convey at a price to be fixed by certain arbitrators, and the vendor died before the award was made, it was held, that the contract could not be enforced against his devisees. *Blundell* v. *Brettargh*, 17 Ves. 232. It seems that where an order of reference gives an arbitrator power to make his award after the death of any of the parties, he may, under a general authority to enlarge the time for making his award, enlarge the time after the death. *Tyler* v. *Jones*, 3 Barn. & Cress. 144. *S. C.* 4 Dowl. & Ryl. 740. In the case of *Edmunds* v. *Cox*, 2 Chitt. Rep. 432, the court seems to have thought that an award simply directing the payment of a sum of money to the survivors of several parties, one of whom had died pending the reference, would have been good, the cause of action being joint, but was void in this instance, because the payment was to be made to and releases given by the surviving parties, *and the executors of the deceased party*, who were strangers to the reference.]

Effect of death of parties.

AGREEMENT TO REFER MATTERS OF ACCOUNT TO THREE, AND TO SUSPEND ACTIONS AND SUITS.

between the said [*E. F.*], and [*A. B.*] and [*C. D.*] that the said sum of [150*l.*] or such part thereof as shall be so paid into the said court, shall be subject to the order or determination of the said court. AND the said [*E. F.*], [*A. B.*], and [*C. D.*] do hereby agree to pay to the said [*attornies*], and to indemnify them against all costs, charges, and expenses, to be occasioned by the recovery, or endeavouring to recover, and receive the said bills. AND LASTLY, *it is hereby mutually agreed* by and between the said parties, that this their submission shall be made an order or rule of his Majesty's Court of Exchequer, at Westminster, pursuant to the statute in such case made and provided. IN WITNESS, &c.

Money paid into court, to be subject to the order of the court.

Agreement by all the parties to pay to and indemnify attornies against all costs, &c. in endeavouring to recover the bills.

Submission to be made a rule of the Court of Exchequer.

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APPOINTMENT OF UMPIRE.

APPOINTMENT *of an* UMPIRE *by the Arbitrators.*

WE the within named [*arbitrators*], do hereby nominate, elect, and appoint [*umpire*], of, &c. to be the umpire between us (*a*), in and concerning the premises within referred, *On condition* (*b*) that he do within —— days

UMPIRE TO ASSIST.

(*a*) If it be to assist the arbitrators, say,

" to assist us, in," &c. *ut supra.*

See *Still* v. *Halford*, 4 Camp. 17.

The better opinion seems to be, that if the ampire elected refuses, the arbitrators may elect another, *toties quoties.*

(*b*) This is prudent; for there is some doubt whether arbitrators, having named an umpire, who refuses to act, can afterwards appoint another. Thus it was adjudged in the Common Pleas, by three judges against the opinion of the Chief Justice Pollexfen, that where a submission was to two arbitrators, and if they make no award, then to the umpirage of such person as they should choose, and they chose one, who refused, and then they chose another, such nomination was a good one, for their power was not so determined by the election of the first umpire, that upon his refusal they could not appoint another; and the first nomi-

from the date hereof, by some writing under his hand, accept the umpirage (*c*). Witness our hands this —— day of ——, 18—. APPOINTMENT OF UMPIRE.

Witness (*d*).

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nation being void by his refusal, was the same thing as if they had never chosen an umpire at all. *Trippet* v. *Eyre*, 3 Lev. 263; *S. C.* 5 Mod. 457; 2 Vent. 113; 1 Show. 76. But in a subsequent case, it was said by Chief Justice Holt, that if arbitrators have authority to choose an umpire, and they choose one accordingly, they have executed their authority, and cannot make another election, though the umpire does not accept of the umpirage; but it is otherwise if they elect upon express condition that he does accept it; for then he is no umpire unless he accepts it: but Justice Rokesby doubted whether an express condition would make a difference, because the words "if the party elected will accept it," seem to be implied in the election. *Reynolds* v. *Gray*, 1 Salk. 70; 1 Ld. Raym. 222; 12 Mod. 120. *S. C.* But the better opinion seems to be, that if the umpire elected refuses, the arbitrators may elect another, *toties quoties*. Com. Dig. *Arbitrament* (F). Wms. n. 2 Saund. 133 *a*. See also Kyd on Awards, 91—4, 2d edit.

(*c*) If the consent of the parties be requisite, add, CONSENT OF PARTIES.

"*And* we the said [*parties in difference*], do hereby consent thereto."

(*d*) The appointment of an umpire made in writing upon paper unstamped is valid, because no statute requires a stamp for the appointment of an umpire. *Routledge* v. *Thornton*, 4 Taunt. 704. So if it be under hand and seal, it does not require a deed stamp, for it is not a deed unless it be delivered as a deed. *Wilson* v. *Smee*, addendum, Kyd on Awards, vii. 2d edit. *Dodd* v. *Herbert*, Sty. 459. Shep. Touchs. 57. *Brown* v. *Vawser*, 4 East, 584. But if it be under hand and seal and be delivered as a deed, then a deed stamp becomes requisite. The same doctrine extends to an appointment of an umpire by the parties. To prevent every doubt on this point, the nomination of an umpire is generally under hand only. The appointment of an umpire in writing does not require a stamp, unless it be delivered as a deed.

An improper mode of choosing an umpire sometimes forms a ground for setting aside the award. Thus if two arbitrators toss up which of them shall nominate the third, this will vitiate the appointment. *Harris* v. *Mitchell*, 2 Vern. 485. *Hewitt* v. *Penney*, Sayer, 99. *Wells* v. *Cook*, 2 Barn. & Ald. 218. *Young* v. *Miller*, 3 Barn. & Cress. 407. But where the parties named two arbitrators, who were to choose a third, and the award was to be made by the three, or any two of them, and each of the arbitrators proposed to the other a third, *who was admitted by the* Improper mode of choosing an umpire sometimes a ground for setting aside award.

APPOINTMENT OF UMPIRE.

other to be a fit person; but not being able to agree which of the two proposed should be selected, they agreed to decide the choice by lot; it was held that this was within their authority, and that an award made by such third arbitrator, in conjunction with the one by whom he had been originally proposed, could not be impeached on that account. *Neale* v. *Ledger*, 16 East, 51.

The *whole* case must be referred to an umpire.

In this case it will be perceived, as each arbitrator admitted the fitness of the person proposed by the other, such person might be considered as the nominee of *both*. It seems, that where arbitrators have a special power to choose an umpire, they must refer the *whole* matter to him, and the submission of a particular point only is bad. Thus where the arbitration bonds were conditioned for the performance of the award of the arbitrators, or of the umpirage of such persons as the arbitrators should jointly choose between the parties, and the arbitrators agreed upon several matters, but not being able to agree upon one point, they referred that point to an umpire, the award was held to be bad, as the umpire should have gone into the whole case, and the arbitrators had in effect chosen an umpire between *themselves*, and not between "the parties." *Tollit* v. *Saunders*, 9 Pri. 612. And see *Middleton* v. *Weeks*, 1 Roll. Abr. 256, pl. 27. *Bradford* v. *Bryan*, Tulles. 268.

At what time the arbitrators may exercise the power of appointing an umpire; and within what time he may make his umpirage.

Arbitrators may, within the time limited for making their award, choose an umpire to make an umpirage, after the time for their award is determined. *Jennings* v. *Vandeputt*, Cro. Car. 263. *Watson* v. *Clement*, 1 Roll. Abr. 262, 2 pl. 5; Wms. n. 2 Saund. 133 (7). In the case of *Fyall* v. *Varier*, 1 Roll. Abr. 261, pl. 3, it is held, that if there be a submission to arbitrators, with this clause, "that if they do not end it within ten days, they shall nominate another that shall end it within ten days," and they do not agree within ten days, upon which they appoint another, who makes an award within ten days, the umpirage is good; because it is the appointment of the parties, and their special agreement; and by making the umpire, the authority of the arbitrator determines.

[*589] If arbitrators chose an umpire before the time allowed for their *award was expired, it was formerly holden, that such nomination was *ipso facto* void, though they absolutely resolved not to make any award themselves. *Reynolds* v. *Gray*, 1 Salk. 70. *S. C.* 12 Mod. 120. 1 Ld. Raym. 222. It was also the opinion formerly, that the power of the arbitrators was not determined by the election of an umpire within the time limited to themselves, unless they absolutely refused to make any award; and even in that case, the umpirage, made within the time, was void: for though the arbitrators might choose an umpire at any

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time during the continuance of their power, yet the umpire could not act until the time for the arbitrators was expired; but the arbitrators might still have made an award. *Donovan* v. *Mascal*, 1 Lev. 302. *S. C.* Sir T. Raym. 205; 1 Mod. 274. But the law seems now to be otherwise. As where in debt on bond, with a condition to perform the award of *A.* and *B.*, so as they made their award on or before the 29th of June, and if they made no award, then to perform the umpirage of him whom *A.* and *B.* should elect, &c. upon *nul agard* pleaded, the plaintiff replied, that *A.* and *B.* on the 29th of June, elected *C.* to be umpire, and that he had made his umpirage, &c. and assigned a breach, &c. And upon demurrer, exception was taken, that *A.* and *B.* had all the 29th of June to make their award; but it was overruled; for *per* Holt, Chief Justice, "If a submission be made to *A.* and *B.* so as they make their award *before Midsummer*, and if they do not agree, then to such umpire as they should choose, so as he makes his umpirage *before Midsummer*, and an umpirage is made accordingly, it is good; because the arbitrators determined their power before by electing an umpire." And so it was resolved in the case of *Traverse* v. *Twisleton*, 1 Lev. 174. 2 Keb. 15. Lord Chief Justice Holt held, that if an umpire be named in the submission, he cannot make his umpirage before the time is expired which is given to the arbitrators to make their award. *Mitchell* v. *Harris*, 1 Ld. Raym. 671. *S. C.* 12 Mod. 512; 1 Salk. 71, 72. But that case appears to be now overruled by *Smailes* v. *Wright*, 3 Maule & Selw. 559, where two persons submitted by bond to the arbitration of two others named as arbitrators, and a third as umpire, so as the award be made by the arbitrators on or before a certain day; but if the said arbitrators do not by the time aforesaid make their award, then the bond shall not be avoided, provided the umpire make his award on or before a subsequent day. The arbitrators made no award, having finally, before the day limited for making their award, disagreed, and declared that they did not intend to make any award; whereupon afterwards, and two days before the time of the arbitrators expired, the umpire made his umpirage. And upon a rule *nisi*, for setting aside the *umpirage, upon the ground that the umpire had no authority to make it, until after the day limited to the arbitrators had expired, and the case of *Mitchell* v. *Harris* being cited in support of the objection, Lord Ellenborough said, if the arbitrators had chosen to resume their authority within the time, and had made their award, it might have been said that here was a conflict of authorities; but they renounced their power, and also announced that they never meant to resume it, and they kept their word. They might have had the full time if they had agreed; but are we to put such a construction upon this submission, as that if they finally disagreed before the time, the rest should be so much waste time? If they finally disagreed and determined their power, why

Submission to two, so as they make their award on or before a day certain; but if they do not by that time make their award, then to an umpire named in the submission, provided he make his award on or before a subsequent day; the arbitrators finally disagree before their time expires, and declare they will not make any award, and do not make any; it was held that the umpirage might be made, after the final disagreement of the arbitrators, before the time allowed them had expired.

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should not the umpire proceed? It does not appear to me that any inconvenience could result from it, and it saved a waste of time. The thing has been done by an umpire of the parties' own choosing, and after a full renunciation of their power by the arbitrators. I therefore think, that what has been done, is within the authority originally intended to be given to the umpire; his umpirage was only defeasible, in the event of the arbitrators making their award within due time. Mr. Justice Le Blanc added, the submission gave the arbitrators so much time, provided they agreed and went on to make their award; but if they failed to make any award, then to the umpire. When, therefore, they finally disagreed, the umpire might proceed; still his umpirage might have become nugatory, if within the time the arbitrators had made their award. So where the submission was "so as the award be made by the arbitrators on or before the 21st of May, and if not made before that day, then to stand to the award of an umpire," &c. the arbitrators made no award, but chose an umpire on the 20th of May, who awarded, that the defendant should pay to the plaintiff £40 before the 11th day of June following; it was objected, that they had no power to choose an umpire on the 20th of May, because the arbitrators themselves had power till the end of the 21st of May to make their award: but the objection was disallowed; for the arbitrators not having made any award, the award of the umpire was good, and judgment for the plaintiff. *Elliott* v. *Chevall*, 1 Lutw. 541, 544. So where in debt upon bond, for the performance of the award of *J. S.* and *J. N.* so as they made it on or before the 1st day of July, and if not, then to the umpirage of *J. D.*, so as he make it on or before the 2d day of July. The arbitrators made no award, but *J. D.* made his umpirage *on the first day of July;* and upon demurrer it was objected that it was made before the time allotted by the submission; because the arbitrators had
[*591] the whole day, namely, the first day *of July, to make their award, and this umpirage was made on the first day; and the case of *Barnard* v. *King* was cited: but it was adjudged that the umpirage was good, for the parties had expressly given to the umpire the first day for executing his authority; and the court did not think the reason of the resolution of the case cited to be of any force, namely, that the court would be in confusion to adjudge which should be good, in case the arbitrators and the umpire had made several awards; for the award of the arbitrators, if they had made any, would be adjudged good, but if they had not, then the umpirage should bind, and there would be no confusion upon concurrence of authority as to the time; for the umpire had not an absolute, but only a conditional concurrence, namely, if the arbitrators make no award within the time; and they thought the case in Roll. Abr. was not good law. *Case* v. *Dare*, Sir T. Jones, 167, 168. S.C. 2 Show. 164. So where there was a submission to two, and in case they dis-

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agreed, to the umpirage of a third person; so that the arbitrators made their award on or before a day certain, and the umpire, if they should differ, before a subsequent day: the umpire made his award before the time given to the arbitrators had expired; and it was held, that the umpirage need not state that the arbitrators had disagreed. *Sprigens* v. *Nash*, 5 Maule & Selw. 193. And in *Roe* v. *Doe*, 2 Durnf. & East, 644, 645, it was objected, that the two arbitrators, who had the power of naming an umpire, had named one before they had entered into the examination of the subject at all; but the court said that there was not any ground for the objection; for it rather seemed to be the fairest way of choosing an umpire. And they said that it had been solemnly determined in that court about thirty years before, that arbitrators might elect an umpire the instant they began to take the matter into consideration. See also *Cowell* v. *Waller*, 2 Barnard. K.B. 154. And it seems to be now settled, that arbitrators cannot proceed on a reference, after they have once named an umpire, for then their authority ceases, though the time for making the award is not expired. *Danes* v. *Monsey*, Rep. Prac. C.B. 116; 3 Vin. Abr. 97, *Arbitrament*, pl. 18. S.C. Hence it seems to follow, that the umpire may make his umpirage before the time which is allowed the arbitrators to make their award is expired, notwithstanding what is said by Lord Holt in the before cited case of *Mitchell* v. *Harris*, 1 Ld. Raym. 671.

Arbitrators having the power to name an umpire, may appoint one before they commence the examination of the subject.

When the arbitrators have named an umpire, their authority ceases.

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Where the submission was, "so that the two arbitrators should make their award before or on the 21st day of June; but if no award should be made before or on that day, then that the parties should observe the award of an umpire, to be chosen by the arbitrators, so as *such umpirage should be made before the 28th of June." The arbitrators met, and did not make their award, nor choose an umpire, before or on the 21st of June; but they appointed an umpire before the 28th of June, and the umpire, before the 28th of June, made his award. It was contended, that the umpire was not chosen in due time; that the arbitrators on the 21st of June were *functi officio*, and could not afterwards appoint an effective umpire; or if they could, they could only do it instantly at the expiration of that day, and not at any indefinite time between that day and the 28th. But the court said, "before, or upon the 21st day of June; until the last moment of that day, the arbitrators have power to agree in award; if they do not in the course of that day agree in award, then they have power to appoint an umpire; but until they fail to make their award on the 21st day of June, the power to appoint an umpire does not begin." *Beck* v. *Sargent*, 4 Taunt. 232. This case seems to be founded entirely on the peculiar wording of the submission, and does not appear to impugn the previous cases, in which it has been held, that the arbitrators may appoint an umpire, either before or after they commence the examination of the subject.

If the bond be, that if the arbitrators do not make their award by the day named, then to abide the award of an umpire to be chosen by the arbitrators, the time for the arbitrators to appoint an umpire commences when the time for their making their award expires.

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The arbitrators joining with the umpire in making his award, does not invalidate it.

If the arbitrators report the evidence to the umpire, and he does not examine the witnesses, yet his award is good, unless he was required to examine them. It is the same if an arbitrator makes his award without examining the witnesses on oath.

So where arbitrators, having chosen an umpire according to their power, afterwards joined with him in making his award, it was held notwithstanding to be a good one; for in law it is the umpirage of the *umpire only*, who was at liberty to take what advice, or opinion, or assistance he pleased. *Soulsay* v. *Hodgson*, 3 Burr. 1474; S.C. 1 Wm. Black. Rep. 463; it is no more than if mere strangers had joined in the award, which could not vitiate. *Beck* v. *Sargent*, 4 Taunt. 232. And if the arbitrators hear all the evidence, and afterwards disagree, and state the evidence to the umpire, on which he makes his award *without re-examining the witnesses*, it is good, unless he is required to examine them before he makes his award. *Hall* v. *Lawrence*, 4 Durnf. & East, 589. So if an arbitrator makes his award without examining the witnesses *on oath*, that is no objection to the validity of the award, unless it be made at the time of their examination. *Ridout* v. *Pye*, 1 Bos. & Pull. 91.

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APPOINTMENT *of a* JOINT ARBITRATOR, *by Two Arbitrators named in the Submission, under a Power authorising them to appoint a Third.*

WE [*arbitrators*], the arbitrators within named by this memorandum in writing under our hands, made before entering upon the within-mentioned arbitration, do hereby nominate and appoint [*third arbitrator*], of, &c., the third arbitrator, to whom, together with ourselves, the within-mentioned matters in difference between the parties within named, shall be referred, according to the tenor and effect of the within rule (*or* within-written bond or obligation, *or* indenture (*a*)). IN WITNESS whereof we have hereunto set our hands this —— day of ——, 18—.

WITNESS (*b*)

(*a*) If the consent of the third person has not been obtained, it may be prudent to add,

"*On condition* that he do within —— days from the date hereof, by some writing under his hand, consent to act therein accordingly." *Vide ante*, p. 587, (*b*).

(*b*) *Vide ante*, p. 588, (*d*).

*BOND *of* ARBITRATION *from one to one (a), in the common Form.*

BOND, ONE TO ONE.

KNOW ALL MEN BY THESE PRESENTS, *That* I, [*obligor*], of ——, in the county of ——, am held and firmly bound to [*obligee*], of ——, in the county of ——, in the sum of [*double the probable amount or the value of the matter in controversy*] pounds, of lawful money of Great Britain; to be paid to the said [*obligee*], or to his certain attorney, executors, administrators, or assigns: *For* which payment to be well and truly made, I bind myself, my heirs, executors, and every of them, firmly by these presents; *Sealed* with my seal: DATED this —— day of ——, [in the —— year of the reign of our Sovereign Lord, *George* the *Fourth*, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith; and] in the year of our Lord, 18—.

Common obligation from one to one.

*THE CONDITION of the above-written bond or obligation [*595]

(a) If the obligation be from one to two, jointly and severally, *vide post*, p. 598; if from one to two, as tenants in common, Vol. 1, p. 484; if from one to two or more, as joint tenants, Vol. 1, p. 515; if jointly and severally from two to one, Vol. 1, p. 480, from three to one, Vol. 1, p. 502, from five to one, *post*, p. 605; some of which forms may be necessary under peculiar circumstances, such as references by partners among themselves, or with others. Thus, where six partners entered into two bonds of submission to arbitration; in one of the bonds, three gave a joint and several bond to the other three, conditioned for the due performance of the award; and the latter gave a similar bond to the three former: the arbitrator awarded that one of three former should pay a certain sum to one of his co-obligors. In an action of debt on the award, brought by the one against the other alone, it was held (Justice Richard *dissentiente*), that he might recover the sum awarded. *Winter* v. *White*, 3 Moore, 674. 1 Brod. & Bing. 350. S. C.

Reference to different forms of obligations.

On a submission, six partners give cross joint and several bonds, three to three, an award that one should pay to his co-obligor, is good.

BOND, ONE TO ONE.

A general condition of a common arbitration bond.

is such, *That* if the above bounden [*obligor*], his heirs, executors, and administrators, on his and their part and behalf, should in all things well and truly stand to, obey, abide by, perform, fulfil, and keep the award, order, arbitrament, judgment, and final determination of [*two arbitrators*], of, &c. (*b*) arbitrators indifferently elected and named, as well on the part and behalf of the above bounden [*obligor*], as of the above-named [*obligee*], to award, order, arbitrate, judge, and determine of and concerning all and all manner of action and actions, cause and causes of action, suits, bills, bonds, specialties, judgments, executions, extents, quarrels, controversies, trespasses, damages, claims, and demands whatsoever, both at law and in equity, or otherwise howsoever, which at any time or times heretofore have been had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by and between the said parties; *So as* the said award be made in writing, under the hands of the said [*arbitrators*] (*c*), and ready to be delivered (*d*) to the said parties in difference, or to such of them as shall desire the same, on or before the —— day of ——, now next ensuing (*e*),

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THREE ARBITRATORS.

(*b*) If there be three arbitrators, which it is frequently prudent to appoint in the first instance, as it prevents the necessity of having an umpire, then say,

"or of any two of them, and which said arbitrators are indifferently," &c. *ut supra.*

(*c*) "or any two of them,"

(*d*) *Vide ante*, p. 583, (*b*).

ENLARGED TIME.

(*e*) If the arbitrators are to have an extended time for making their award, say,

"or, on or before such other day, not beyond the —— day of ——, as the said arbitrators (*or* any two of them) shall, by writing under their hands, [to be indorsed on these presents,] from time to time appoint."

UMPIRE.

If there be only two, or an equal number of arbitrators appointed, and on their disagreement an umpire is to be appointed, say,

"*And* in case the said arbitrators should not make such their award of and concerning the premises within the time limited as aforesaid, if the above bounden [*obligor*],

* *Then* the above written bond or obligation shall be void, and of no effect (*f*). BOND, ONE TO ONE.

SIGNED, SEALED, AND DELIVERED, (being first duly stamped (*g*)), in the presence of

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his heirs, executors, and administrators, on his and their part and behalf, should in all things well and truly stand to, obey, abide by, perform, fulfil, and keep the award, order, umpirage, judgment, and final determination of †[*umpire*], of, &c., being a person indifferently named and chosen by the said parties, for umpire in and concerning the premises; *So as* the said umpire do make and set down his award and umpirage in writing under his hand, and ready to be delivered to the said parties in difference, or to such of them as shall desire the same, on or before the —— day of ——, now next ensuing,—*Then*," &c. *ut supra*.

(*f*) If the submission is to be made a rule of Court, say, RULE OF COURT.

" *And* the said [*obligor*] doth hereby consent and agree, that this his submission shall or may be made an order or rule of his Majesty's Court of King's Bench at Westminster, at the instance of the said [*obligee*], his executors or administrators."

It may be sometimes prudent to add, ARBITRATORS TO RECEIVE PAROL OR WRITTEN EVIDENCE, AND EXAMINE ON OATH.

" *And* the said [*obligor*] doth hereby further consent and agree that the said arbitrators (and umpire) shall, for the purpose of enabling them (or him) to make the said award *(or umpirage), be at liberty to go into parol, as well as written evidence; and to examine the said parties in difference (or any) or either of them, and such other witnesses as they (or he) shall think proper, on oath; the parties and witnesses to be sworn before a Judge, or a

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† If the arbitrators are to name the umpire, say, ARBITRATORS TO NAME UMPIRE.

" of such third person as they the said arbitrators shall by writing under their hands [to be indorsed on these presents], indifferently nominate, elect, and appoint as umpire, in and concerning," &c. *ut supra*.

BOND, ONE TO ONE.

Master in Chancery, or a Master Extraordinary in Chancery.†"

If it be the case, add,

REFERENCE NOT TO DISSOLVE INJUNCTION.

"*And* that nothing herein contained shall extend, or be construed to extend, to dissolve an injunction obtained by the said [*obligor*] in his Majesty's High Court of Chancery, restraining the said [*obligee*] from proceeding at law against the said [*obligor*], touching the matters in the said injunction mentioned or referred to: *But* the said arbitrators (or umpire) shall be at liberty to order the said injunction to be dissolved, if they (or he) should think proper."

But arbitrators to be at liberty to dissolve it.

Stamp.

(*g*) Stamp, one pound, fifteen shillings, 55 Geo. III. c. 184. Sched. part i, tit. BOND.

An agreement stamp is not necessary to an arbitration bond, containing besides the usual covenants, an agreement as to payment of costs. In re *Wansborough* v. *Dyer*, 2 Chit. Rep. 40.

† As to swearing the witnesses, *vide post*, CERTIFICATE, title ARBITRATION, p. 623.

WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

As to the propriety of a warrant of attorney to confess judgment, *vide post*, WARRANT OF ATTORNEY, title ARBITRATION, p. 639.

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BOND, ONE TO TWO, TO ABIDE THE AWARD OF THREE, OR TWO OF THEM, OR THEIR UMPIRE.

BOND *from One to Two jointly and severally, to abide by the Award of Three Arbitrators, or any Two of them, or of their Umpire.*

Obligation, one to two, jointly and severally.

KNOW ALL MEN BY THESE PRESENTS, That I, [*obligor*], of, &c. am held and firmly bound to [*obligee*], of, &c. and [*other obligee*], of, &c. jointly and severally (*a*), in the sum of [*double the probable amount or the value of the matter in controversy*] pounds, of lawful money of Great Bri-

(*a*) *Vide* Vol. 1, p. 312.

tain; to be paid to the said [*obligee*] and [*other obligee*], or either of them, their or either of their certain attorney, executors, administrators, or assigns: *For* which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, firmly by these presents; *Sealed* with my seal: DATED, &c. (*ut ante*, p. 594.)

BOND, ONE TO TWO, TO ABIDE THE AWARD OF THREE, OR TWO OF THEM, OR THEIR UMPIRE.

WHEREAS divers doubts, differences, causes of suit, and disputes have arisen between the above bounden [*obligor*] and the above named [*obligee*] and [*other obligee*]. AND WHEREAS it hath been agreed that the same should be referred to the hearing and arbitrament of [*three arbitrators*], of, &c. or such two of them as should be willing to make such arbitration: *And* in case the said [*three arbitrators*], or any two of them, should take upon themselves such arbitration, and should not agree in making an award, then that the said [*three arbitrators*], or such two of them as should undertake such arbitration, should choose an umpire, to order and arbitrate concerning the said disputes; [*And* that the award, order, arbitrament, umpirage, final *end, and determination of the said [*three arbitrators*], or of such two of them as should undertake such arbitration, or of such umpire, so to be chosen as aforesaid, should be made a rule of the Court of King's Bench at Westminster.

Recital of disputes between the parties; and agreement to refer them to arbitration or umpirage; to be made a rule of Court.

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NOW THE CONDITION of the above written bond or obligation is such, *That* if the above bounden [*obligor*], his heirs, executors, and administrators, should (*b*) on his and

Condition of arbitration bond, to abide by award of three

(*b*) Instead of the word "should," the words "shall and do" are generally used in the condition of a bond, and in other legal instruments, where the thing to be done is spoken of under a condition or supposition. But that mode of expression is not grammatically correct; for it is a general rule, that when something contingent or doubtful is implied, the subjunctive mood ought to be used. Therefore, as "if," "unless," "provided," &c. govern the subjunctive mood, and as it is not an invariable practice to use the words "shall and do," instead of "should," the precedents have been generally altered, by substituting "should" for "shall and do." It is not of the least importance which form of expression is used in a deed, excepting so far as regards grammatical

Where the thing to be done is spoken of under a condition, the word "should" ought to be used, and not "shall and do."

BOND, ONE TO TWO, TO ABIDE THE AWARD OF THREE, OR TWO OF THEM, OR THEIR UMPIRE.

their part and behalf, in all things well and truly obey, abide by, observe, perform, fulfil, and keep the award, order, arbitrament, final end, and determination of them the said [*three arbitrators*], arbitrators indifferently named, elected, and chosen, as well on the part and behalf of the said [*obligor*] as of the said [*obligee*] and [*other obligee*], to arbitrate, award, order, judge, and determine of and concerning all and all manner of action and actions, cause and causes of action, quarrels, controversies, trespasses, damages, and demands whatsoever, at any time or times heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending, by or between the said [*obligor*] and [*obligee*] and [*other obligee*], or any or either of them, or

arbitrators, or any two of them:

of such two of the said arbitrators as shall consent to accept and take upon *themselves the making of such award (in case any of them should refuse or decline to make the same;) *So as* the said award be made by the said [*three arbitrators*], or such two of them as shall so agree to make the same as aforesaid on or before the —— day of —— now next ensuing (*c*); *But* in case the said arbitrators, or some two of them (if they should all take upon themselves the making of the said award,) should not agree in their award, *Then*, if the above bounden [*obligor*], his heirs, executors, and administrators, should on his and their part and behalf in all things well and truly stand to, obey, abide by, observe, perform, fulfil, and keep the award, order, arbitrament, umpirage, final end, and determination of such person as shall be nominated and chosen (*d*) by the said [*three arbitrators*], or by such two of them as shall consent and agree to take upon themselves the said arbitration between the said parties,

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or of their umpire.

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propriety. But the strict attention which is now observed in relation to the rules and elegancies of our language, would render a deviation from the rule wholly inexcusable in ordinary compositions. See Bishop Lowth's Grammar, 44, 47, ed. 1767; and Murray's Grammar, 19th rule of Syntax.

ENLARGED TIME.

(*c*) If the arbitrators are to have an extended time for making their award, *vide ante*, p. 596.

UMPIRE.

(*d*) As to the choosing an umpire, *vide ante*, p. 587, 588.

of and concerning the premises; *So as* such umpire, so to be chosen as aforesaid, do and shall make his award, order, umpirage, final end, and determination of and concerning the premises, on or before the —— day of —— now next ensuing; *The* above written bond or obligation shall be void and of no effect; [or else shall remain, continue, and be in full force and virtue]. And the said [*obligor*] doth hereby agree, that his submission to the award or umpirage above mentioned, shall be made a rule of his Majesty's Court of King's Bench at Westminster(*e*), In witness, &c.

BOND, ONE TO TWO, TO ABIDE THE AWARD OF THREE, OR TWO OF THEM, OR THEIR UMPIRE.

Agreement by obligor, that his submission shall be made a rule of court.

(*e*) For other additional clauses which the circumstances of particular cases sometimes render prudent, *vide ante*, pp. 574, 584, 585 (*b*), *post*, p. 604, and the subsequent forms.

BOND, ONE TO ONE, ON SUBMISSION TO TWO, OR TO THEM AND THEIR NOMINEE, OR ANY TWO OF THEM.

*BOND *from One to One, to abide by the Award of Two Arbitrators; or of the Two Arbitrators and a Third Person, to be chosen by them, or of any Two of them; and to produce all Deeds and Writings relating to the Matters in dispute:* AGREEMENT *that a Suit in Chancery shall be dismissed on Execution of the Bond; the Submission to be made a Rule of Court; the Obligee's Costs in the Chancery Suit to be settled by the Arbitrators, as between Attorney and Client, and if they think fit, a Compensation for his Loss of Time and Expenses in endeavouring to sell certain Bonds; Accounts, out of which the Consideration given by the Obligee to the Obligor for a* post obit *Bond, to be opened by the Arbitrators; the Purchase not to be impeached, but only the Errors, if any, to be rectified; the Arbitrators to proceed* ex parte, *in case of the Non-attendance of either of the Parties after Notice; the Arbitrators, if they think fit, to examine the Parties and Witnesses on Oath; the Costs of the Arbitrators, Submission, and Award, and the Costs of the Chancery Suit, to be borne as the Arbitrators shall think proper; and the Arbitrators to have Power from Time to Time, to enlarge the Time for making their Award, until a given Day.*

Obligation, one to one.

KNOW ALL MEN, &c. *(obligation from one to one,* ut ante, 594.)

Recital of disputes:

WHEREAS divers differences and disputes have arisen, and are at present subsisting between the above bounden

[*obligor*] and the above named [*obligee*], and a certain *suit in the High Court of Chancery is now pending, wherein the said [*obligor*] is the plaintiff, and the said [*obligee*] is the defendant; and there are divers accounts now subsisting and unsettled between them the said [*obligor*] and [*obligee*]. And whereas it has been agreed, that immediately upon the execution of the above written bond or obligation, the said suit in Chancery shall be no further prosecuted or proceeded in, but shall be dismissed out of the said court; and that the said parties shall take all proper steps in order to procure the same to be so dismissed. And whereas it has been agreed, that all such differences and disputes as aforesaid, and all such unsettled accounts as aforesaid, shall be referred to the hearing, arbitrament, and determination of [*two arbitrators*], of, &c. *And* in case the said [*two arbitrators*] should take upon themselves such arbitration, but should not agree in making an award, then the said [*two arbitrators*] shall mutually choose some third person to join with them in hearing and determining the said matters in dispute; and the award, order, arbitrament, and determination, of the said [*two arbitrators*], or of the said [*two arbitrators*] and such person so to be chosen as aforesaid, or of any two of them, shall be binding and conclusive upon the said parties in dispute; and shall be made a rule of the Court of King's Bench at Westminster.

BOND, ONE TO ONE, ON SUBMISSION TO TWO, OR TO THEM AND THEIR NOMINEE, OR ANY TWO OF THEM.

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a Chancery suit, and unsettled accounts between the parties.

Recital of agreement to dismiss Chancery suit on execution of bond.

Recital of agreement to submit disputes and unsettled accounts to two arbitrators;

and if they disagree, to them and a third person, to be chosen by them.

Now the Condition of the above written bond or obligation is such, that if the said [*obligor*], his heirs, executors, and administrators, should on his and their part and behalf in all things well and truly obey, abide, observe, perform, fulfil, and keep the award, order, arbitrament, and determination, which shall be made by the said [*three arbitrators*], of and concerning all and all manner of action and actions, suit and suits, cause and causes of action and suit, quarrels, controversies, trespasses, accounts, damages, claims, and demands whatsoever, at any time or times heretofore brought, commenced, sued and prosecuted, done, suffered, committed, or depending by or between them the said [*obligor*] and [*obligee*], or in

Condition of arbitration bond to abide by award of two arbitrators;

BOND, ONE TO ONE, ON SUBMISSION TO TWO, OR TO THEM AND THEIR NOMINEE, OR ANY TWO OF THEM.

anywise relating thereto; *But so as* such award, order, or determination, be made in writing, under the hands of the said [*two arbitrators*], and *ready to be delivered to the said [*obligor*], (in case he should request the same (*a*)) on or before the —— day of —— next ensuing the day of the date of the above written bond or obligation: OR in case the said [*two arbitrators*] should not agree in their award, then if the said [*obligor*], his heirs, executors, and administrators, should, on his and their parts and behalves, in all things well and truly stand to, obey, abide by, observe, perform, fulfil, and keep the award, order, and determination of the said [*two arbitrators*], and of such third person so to be chosen as aforesaid, or of any two of them; *But so as* such last-mentioned award, order, or determination, be made in writing, under the hands and seals of the parties making the same, and ready to be delivered to the said [*obligor*] (in case he should request the same), on or before the —— day of —— next ensuing the day of the date of the said bond or obligation: AND ALSO if the said [*obligor*] should produce, or cause to be produced to the said arbitrators, all deeds, papers, evidences, and writings concerning, or in anywise relating to the said matters in dispute, or any of them, which are in the custody or power of him the said [*obligor*], or which he can obtain or come by, without suit at law or in equity, and leave the same with the said arbitrators for their perusal, inspection, and examination, *Then* the above written bond or obligation to be void and of no effect; or else to remain, continue, and be in full force and virtue. AND the said [*obligor*] doth hereby agree, that his submission to the award above mentioned shall be made a rule of his Majesty's Court of King's Bench at Westminster. AND it is agreed by and between the said [*obligor*] and [*obligee*], that the costs, charges, and expenses which the said [*obligee*] hath been put to or sustained by reason of the said suit in Chancery, shall be settled and adjusted by the said arbitrators, as between attorney and client: AND that it shall be at the discretion of the said arbitrators, or any two of them, to make such

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or of the two arbitrators and a third person to be chosen by them, or of any two of them;

and to produce to arbitrators all deeds and writings relating to the matters in dispute.

Agreement that submission shall be made a rule of court;

obligee's costs in Chancery suit to be settled by arbitrators, as between attorney and client;

and if they think fit, a compensation for his loss

(*a*) *Vide ante*, p. 583 (*b*).

BOND, ONE TO ONE, ON SUBMISSION TO TWO, OR TO THEM AND THEIR NOMINEE, OR ANY TWO OF THEM.

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compensation to the said [*obligee*] as they shall think fit, for his loss of time and expenses in attempting to effect a sale of six several bonds or obligations given by *—— esquire, to the said [*obligor*], and of all the said bonds, bearing date respectively the —— day of ——, 18—. And it is also agreed between the said [*obligor*] and [*obligee*], that the accounts between them, out of which the consideration of —— pounds, as given by the said [*obligee*] to the said [*obligor*], for the purchase, of a *post obit* bond of —— thousand pounds, entered into by the said [*obligor*] to the said [*obligee*], shall be opened and gone into, but the purchase of the said bond shall not be impeached or invalidated, but merely if any errors should appear on either side in the said accounts, the same shall be rectified, and the balance increased or decreased, as shall appear to be just and equitable to the said arbitrators, or any two of them. And it is also agreed, that it shall be lawful for the said arbitrators, or any two of them, to proceed *ex parte* with the said arbitration, in case of the non-attendance of either of them the said [*obligor*] and [*obligee*], after —— days previous notice in writing being given to him for that purpose, or left at his last usual place of abode. And it is likewise agreed, that the said arbitrators, or any two of them, shall have power, if they think fit, to examine upon oath the said [*obligor*] and [*obligee*], or either of them, and all witnesses, or any witness, who shall or may attend the said arbitrators, and to require them, or any of them, to be sworn before any competent authority. And it is agreed, that the costs and charges of the said arbitrators, and of the submission to arbitration hereby entered into, and of the award of the said arbitrators, or any two of them, and also the costs of the said suit in Chancery, shall be borne and paid by the said [*obligor*] and [*obligee*], in such proportions or in such manner as the said arbitrators, or any two of them, shall in their discretion think proper. And lastly, it is hereby declared and agreed, that it shall be lawful for the said arbitrators, or any two or more of them, by any writing or writings under their or his hands or hand, and indorsed upon these presents, from time to time to enlarge the time for making their award in the

of time and expenses in endeavouring to sell certain bonds;

accounts, out of which the consideration given by obligee to obligor for a *post obit* bond, to be opened by the arbitrators;

the purchase not to be impeached, but only the errors, if any, to be rectified;

arbitrators to proceed *ex parte* in case of the non-attendance of either of the parties after notice;

arbitrators, if they think fit, to examine parties and witnesses on oath:

costs of arbitrators, submission, and award, and costs of Chancery suit, to be borne as arbitrators shall think proper;

arbitrators to have power from time to time to enlarge the time for making their award, until a given day.

BOND, ONE TO ONE, ON SUBMISSION TO TWO, OR TO THEM AND THEIR NOMINEE, OR ANY TWO OF THEM.

said matters in difference, but so as the period for enlarging the same do not exceed the —— day of —— which will be in the year of our Lord 18—. IN WITNESS whereof, *the said [*obligor*] and [*obligee*] have hereunto set their hands and seals on the day of the date of the above written bond or obligation.

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SIGNED, SEALED, AND DELIVERED, being first duly stamped (*b*), in the presence of us

Stamp.

(*b*) *Vide ante*, p. 596 (*g*).

BOND, FIVE TO ONE, JOINTLY AND SEVERALLY WITH JOINT SEVERANCES.

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BOND *from Five to One, jointly and severally* (*a*), *with a Joint Severance of any Four, Three, or Two of them, to abide by the Award of Three Arbitrators, or any Two of them, concerning the Parties' Claims under Three *Wills; so as the Award be made by a given Day: but if the Arbitrators should be prevented from making their Award by that Time, then so as the Award be made within Two Months afterwards. The submission to be made a Rule of Court.*

Obligation from five to one, jointly and se-

KNOW ALL MEN BY THESE PRESENTS, *That* WE, [*J. H.*], of, &c., [*J. M.*], of, &c., bookseller,

If two or more submit to arbitration jointly and severally, each is answerable for the other's performance of the award.

(*a*) Where parties agree jointly and severally to refer disputes to arbitration, and bind themselves jointly and severally to perform the award, if each of two or more parties on one side be ordered to pay any sum of money, or to do any particular act, each is answerable, not only for the performance of what is particularly awarded that he shall perform himself, but also for the obedience of the others on the same side, to the

claiming in right of his wife [*Jane M.*], late [*Jane H.*], spinster, the reverend [*J. S.*], of, &c. clerk, claiming in right of his late wife [*C. S*], formerly [*C. H.*], spinster, now deceased, and [*C. H.*], of, &c. spinster, are held and firmly bound to [*T. H.*],

BOND, FIVE TO ONE, JOINTLY AND SEVERALLY, WITH JOINT SEVERANCES.

verally, with a joint severance of any four, three, or two of them.

award. Thus in a modern case, there being disputes between *A.* and *B.*, who had been in succession tenants of a farm, and *C.* the in-coming tenant, respecting the repairs, &c. By an agreement in writing between *A.* of the first part, *B.* of the second part, and *C.* of the third part, the said parties jointly and severally agreed to refer all matters in dispute between them, or any or either of them, to arbitration; and *A.* and *B.* thereby for themselves, their executors, &c. *jointly and severally* undertook, promised, and agreed to and with *C.* that they and their and each of their executors, &c. would, on his and their respective parts, abide by, perform, and keep the award; and *C.* undertook and promised to and with *A.* and *B.* jointly and severally, and their respective executors and administrators, to perform the award on his part. The arbitrator awarded that *A.* and *B.* should each of them pay a certain sum to *C.*; and notwithstanding the arbitrator awarded nothing to be done by *C.* *and D.* jointly, yet it was held that they were *jointly* responsible for the sum awarded to be paid by each. Lord Kenyon, in delivering the judgment of the Court, said, "This is rather a hard case on these two tenants: perhaps if it had been stated to them at the time of the agreement, that each was to become answerable for the other, they would have hesitated before they signed the agreement: but the words of the agreement are too strong to be got over. It was reasonable that each should make satisfaction for the time he occupied; but by the terms of this agreement they have promised jointly and severally, which makes them responsible the one for the other." *Mansell* v. *Burridge*, 7 Durnf. & East, 352. See also *Johnson* v. *Wilson*, Willes, 254. The Duke of *Northumberland* v. *Errington*, 5 Durnf. & East, 522. This doctrine of joint responsibility has been carried to a greater extent in a more ancient case. For where there was a controversy between *A.* the heir at law of a testator, and *B.* and *C.* his devisees, concerning certain lands devised to them; and by a deed between *A.* of the one part, and *B.* and *C.* of the other part, they submitted to the award of an arbitrator, and thereupon *A.* bound himself in an obligation of 1000*l.* to *B.* and *C.* with a condition to perform the award of the arbitrator touching the controversy; and *B.* and *C.*, because they would not be bound the one for the other, entered into several obligations of 1000*l.* each to *A.* with several conditions for the performance of the award of the arbitrator; and he awarded that *A.* should make a release of all his right in the

If there be a joint submission by deed, and separate several obligations, and a sum be awarded to be paid by both, each is liable to an action of debt on the bond for the whole;

BOND, FIVE TO ONE, JOINTLY ANDSEVERALLY, WITH JOINT SEVERANCES.

of, * &c. yeoman, in the sum of (one thousand) pounds of lawful money of Great Britain, to be

land to *B.* and *C.*, and that in consideration thereof, *B.* and *C.* should pay 300*l.* to *A.* In an action of debt by *A.* against *B.* upon his obligation for nonperformance of the award, the breach assigned was, that neither *B.* nor *C.* paid the 300*l.* at the time appointed, according to the award; and all the above-mentioned matters were disclosed by the pleadings. It was argued for the defendant *B.* that the arbitrament was void; for the defendant's bond was for a reference of all controversies between *A.* and *B.*, and *C.* was not mentioned in the bond; and the award was between *A.*, *B.*, and *C.*, and that *B.* and *C.* should pay such a sum; and the breach was alleged therein; and for anything that appeared in the bond and condition, *C.* was a stranger to the submission, unless by this collateral surmise, which surmise was not allowable; also that this surmise was *quasi* a departure from the declaration. But on a demurrer, after divers arguments at the bar, the court resolved, that forasmuch as this is not a bare surmise, but grounded upon a deed, which is of as high a nature as the bond, and made at the same time, it is *quasi* but one submission by several bonds, and so the surmise is allowable, and stands well with the bond in question. And although *B.* and *C.* did not join in one bond of submission, because they would not be bound one for the other, yet when at the same time they entered into several bonds to perform the award, it is but as one submission, and is not any departure from the declaration. For it is not fitting that the declaration (which is but for the debt upon the bond of *B.*) should mention any such submission; but it suffices to show it by the replication to maintain this arbitrament. For upon all the matter being shown, it appears that *C.* is no stranger to the award, for he and *B.* submitted themselves jointly; and though they entered into several obligations, yet this did not make *C.* any stranger to the award. And therefore all the court adjudged, that the award was good, the replication being good enough to maintain the arbitrament, notwithstanding this objection. *Hayes* v. *Hayes*, Cro. Car. 433, S. C. *Haies* v. *Haies*, 1 Roll. Abr. 247, pl. 9; 3 Vin. Abr. 54. Mr. Kyd says, "but in such a case, if the award had been several, certainly the one could not have been sued for nonperformance on the part of the other." Kyd on Awards, 45, 2d edit. Yet it seems, that in consequence of the submission by deed, each would, in case of a several award, have been liable for the other. For where three entered into an obligation to perform an award, concerning disputes between them and another, and the arbitrator awarded that each of the three should pay the other twenty shillings a-piece, it was held that each was answerable for all the payments;

and it seems, each would have been liable for the whole, if the award had been several.

paid to the *said [*T. H.*], or to his certain attorney, executors, administrators, or assigns; *For* which payment to be well and truly made, we (*b*)

BOND, FIVE TO ONE, JOINTLY AND SEVERALLY, WITH JOINT SEVERANCES.

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and that a tender of twenty shillings by one, was not a performance of the award on his part. *Genne* v. *Tinker*, 3 Lev. 24. Wms. n. 1 Saund. 325 (3). So where the covenant is joint and several, in an action against one only, the breach may be assigned in the neglect of both. *Lilley* v. *Hedges*, 1 Str. 552.

But the parties on the same side are not without their remedy, in case either of them should suffer by the default of his companion. For a compensation may be recovered by him who actually performs the award, from such of his co-obligors as neglect their share of the duty imposed by the award. Thus where arbitrators directed that each of two parties on the same side should pay a moiety of the costs of the arbitration, and of making the submission a rule of court; and one party, in order to get the award out of the hands of the arbitrators, paid the whole; it was held, that he might have an attachment against the other to compel repayment of the moiety. *Hicks* v. *Richardson*, 1 Bos. & Pul. 93. And see *Stokes* v. *Lewis*, 2 Smith, 12. An action would have been maintainable, if the party had preferred that mode of proceeding. Caldwell on Arbitration, 145, 167.

But the party who pays may recover from his companions their quota.

(*b*) Either the above or the following form may be used, as they will both have the same effect; but as this form appears more definite, some gentlemen may prefer it.

"We bind ourselves, our heirs, executors, and administrators jointly; *and* any four of us, separately and apart from the other of us, bind ourselves, our heirs, executors, and administrators jointly; *and* any three of us, separately and apart from the others and other of us, bind ourselves, our heirs, executors, and administrators jointly; *and* any two of us separately and apart from the others and other of us, bind ourselves, our heirs, executors, and administrators jointly; *and* each of us separately and apart from the others and other of us, bindeth himself and herself, his and her heirs, executors, and administrators, severally, firmly," &c. *ut supra.*

Full form of obligation from five to one jointly, and any four, three, or two of them jointly, and each of them separately.

Unless there be such a severance or division of a joint and several obligation as in either of the above forms, the obligee cannot sue any four, three, or two of the obligors in the life-time of the other or others

Without a severance of a joint and several bond, the

BOND, FIVE TO ONE, JOINTLY AND SEVERALLY; WITH JOINT SEVERANCES.

bind ourselves * and each of us, and any four, three, or two of us, our and each of our, and any

of them, but he must sue them all, or each of them separately. *Vide* Vol. 1, p. 311 (*a*); p. 502(*a*); and 1 Chitty on Pleading, 33, 3d edit. The power to sue jointly any number of the obligors in an arbitration bond, is peculiarly desirable; for if some of them should be willing to perform the award, unnecessary expenses would be incurred by an action against all of them, or by several separate actions against such of them as refused.

obligee cannot sue two or more during the life of the others.

The power to sue jointly any number of the obligors, is desirable on an arbitration, as it saves expenses;

If the submission be by deed, where there are several covenantors, see the lien part of a covenant adapted to the above circumstances, *ante*, p. 65.

and as it is discretionary in the Court to compel performance of an award by attachment, under a submission made a rule of court; in which case the party is left to his action.

The remedy under the bond or covenant, independently of the proceedings by attachment, is of considerable importance. For although non-performance of an award, under a submission of the parties made a rule of court, is a contempt of the court, and obedience to it may be enforced by attachment; yet this interference on the part of the court is not of course; it is held to be discretionary, whether or not the court will so interfere, since the plaintiff has still another remedy, by action. *Hales* v. *Taylor*, Stra. 695. *Veale* v. *Warner*, 1 Saund. 326. *Burton* v. *Petrie*, cited 2 Ves. jun. 453; *ante*, p. 578. And where contradictory affidavits are produced in support of, and in showing cause against the rule for the attachment, the court will leave the party to his suit at law. *Hales* v. *Taylor*, Str. 695.

Pending an action by the plaintiff, he cannor proceed by attachment, nor waive his action to proceed by attachment;

Upon a submission being made a rule of court, it was formerly holden, that the party might proceed both by action and attachment at the same time; *Clarke* v. *Elwick*, 10 Mod. 333; *Anon.* Salk. 73; but a different doctrine has since been laid down. *Stock* v. *De Smith*, Cas. Temp. Hardw. 106. *Anon.* Andr. 299. And accordingly, in a late case, the Court of Common Pleas would not grant an attachment for non-performance of an award, pending an action brought upon it; nor would allow the plaintiff to waive the action, in order to apply for an attachment. *Badley* v. *Loveday*, 1 Bos. & Pul. 81. 2 Tidd's Prac. 865, 7th edit. For the party has made his election; and he can have no better remedy upon the attachment than by action. But where the attachment is first resorted to, it does not debar the party from bringing an action, the greater and more beneficial remedy. *Paterson* v. *Gross*, 2 Barnard. 227. The two remedies in these cases have but one object, that of enforcing obedience to the award. The proceeding by action is a matter of right, while the proceeding by attachment depends on the discretion of the court. *Stock* v. *De Smith*, Cas. Temp. Hardw. 106. *Hutchins* v. *Hutchins*, Andr. 297. *Ante*, p. 578. And although the defendant be in custody on an attachment for non-payment of

but after an attachment, he may proceed by action.

If the defendant be in custody on an attachment,

four, three, or two of our heirs, executors, and administrators, jointly, severally, and respectively, firmly by these presents; *Sealed* with our seals: DATED, &c. (*ut ante*, p. 594).

BOND, FIVE TO ONE, JOINTLY AND SEVERALLY, WITH JOINT SEVERANCES.

WHEREAS divers differences, disputes, and controversies have arisen between the above bounden [*J. H.*], [*J. M.*] and [*Jane*] his wife, [*J. S.*] and [*C. H.*], and the above named [*T. H.*], as to their several and respective claims and interests, under the several and respective wills of [*T. T.*] late of, &c. deceased, [*G. H.*], late of, &c. deceased, and [*J. H.*], late of, &c. deceased; and they have severally and respectively agreed to submit the same to the arbitrament and final determination of [*three arbitrators*], of, &c., and that their award, or the award of any two of them, shall be final and conclusive, both at law and in equity, as well on the part and behalf of the above bounden [*J. H.*], [*J. M.*] and [*Jane*] his wife, [*J. H.*] and [*C. H.*], their heirs, executors, and adminis-

Recital of dispute as to claims under three wills;

and agreement to refer same to three abitrators.

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money awarded, the court will not stay proceedings in an action of debt on the bond, or on the award; for if the defendant die in execution on the attachment, that execution is at an end, and cannot be revived by *scire facias* against his heirs or executors, to enforce the payment; because the statute says, that the attachment shall be prosecuted as in the case of a contempt in other cases; and a contempt not being in the nature of a judgment or decree, dies with the person, and cannot be prosecuted against his representatives. *Webster* v. *Bishop*, Prec. in Chanc. 223. 2 Vern. 444. S. C. But if the defendant die in execution on a judgment, the plaintiff may still have an execution against his goods. *Paterson* v. *Gross*, 2 Barnard. 227. However if the defendant be taken in execution on the judgment, the attachment will be discharged. *Richardson* v. *Chancey*, 1 Barnard. 386; *Stock* v. *De Smith*, Cas. Temp. Hardw. 106, 107; Kyd on Awards, 315; Caldwell on Arbitration, 153; 1 Bac. Abr. Gwill. ed. 237. See as to binding the heir of the obligor or covenantor, *post*, ENLARGEMENT, title ARBITRATION. [It is no objection to the issuing of an attachment that the party renders out of the jurisdiction of the court, for the court will not inquire whether the circumstances under which the application is made are such, that it can be executed with effect. *Hopcroft* v. *Fermor*, 1 Bing. 378.]

the court will not stay proceedings in action of debt;

for a contempt, like *actio personalis, moritur cum persona.*

But if the defendant die in execution on a judgment, the plaintiff may have execution against his goods.

Taking defendant in execution on a judgment, discharges an attachment.

BOND, FIVE TO ONE, JOINTLY AND SEVERALLY, WITH JOINT SEVERANCES.

trators, as on *the part and behalf of the above named [*T. H.*] his heirs, executors, and administrators.

Condition to abide by the award of three arbitrators, or any two of them, concerning the five obligors' claims under the three wills, or any of them,

NOW THE CONDITION of the above written bond or obligation is such, That if the above bounden [*J. H.*], [*J. M.*] and [*Jane*] his wife, [*J. S.*], and [*C. H.*], their executors and administrators, respectively, should, on his, her, and their several and respective part and behalf, parts and behalves, in all things well and truly stand to, abide by, observe, perform fulfil, and keep the award, order, arbitrament, and final determination of the said [*three arbitrators*], or of any two of them, arbitrators indifferently chosen, elected, and named, as well by and on the part and behalf of the above bounden [*J. H.*], [*J. M.*] and [*Jane*] his wife, [*J. S.*] and [*C. H.*], as on the part and behalf of the above named [*T. H.*], to arbitrate, award, judge, and finally determine, concerning all and all manner of claim and claims, which they, or any, or either of them have, or pretend to have, by, from, or under the above mentioned wills, or any, or either of them (*c*); *So* as the award *of the said arbitrators, or of any two of them, be made in writing, indented, under their hands and seals, or under the hands and seals of any two of them, ready to be delivered to the said parties in difference, on or before the —— day of —— now next ensuing; *Unless* they the said arbitrators, or some or one of them, should be prevented from so doing by sickness or some other unavoidable event: *But* if the said arbitrators, or any or either of them, should be prevented by sickness or any other unavoidable event, from making such their award by the time aforesaid, then if the above bounden [*J. H.*], [*J. M.*] and [*Jane*] his wife, [*J. S.*], and [*C. H.*], their heirs, executors, and administrators, should respectively well and truly stand to, abide by, obey, perform, fulfil, and keep the award, arbitrament, and final determination of the said [*three arbitrators*], or of any two of them, of and concerning the premises; *So as* they the said arbitra-

so as the award be made by a given day.

[*611]

But if the arbitrators be prevented by some unavoidable event from making their award by that time then.

A general reference seems prudent.

(*c*) Perhaps in cases of this nature, it is better to make a general reference, *ut ante*, pp. 574, 599, 602; or at least, to make it also general, *ut post*, COVENANT, title ARBITRATION.

tors, *or any two of them, make their award in writing indented under their hands and seals, ready to be delivered to the said parties in difference, within the time or space of two calendar months, from the said [*original time limited for making the award*] —— day of ——, *Then* the above written bond or obligation to be void, but otherwise to be and remain in full force and virtue. And *it is hereby agreed* by and between all the said parties in difference, that these prsents, and the submission hereby made of the said matters in controversy, shall be made a rule of his Majesty's Court of King's Bench at Westminster, to the end and intent, that the said parties in difference may be finally concluded by the said arbitration by these presents intended, pursuant to the statute in such case made and provided. In WITNESS whereof the said [*obligors*] and [*obligee*] have, &c. (*ut ante*, p. 605.)

BOND, FIVE TO ONE JOINTLY AND SEVERALLY, WITH JOINT SEVERANCES.

so as the award be made within two months afterwards.

Submission to be made a rule of court.

[613]

BOND, ON SUBMISSION TO ASCERTAIN SHARES CAPTURED SHIP AND CARGO SHOULD BEAR OF RANSOM.

BOND *from the Master of a Ship to a Merchant, who exported a Cargo in the Ship, to abide by the Award of Two Arbitrators, as to Disputes concerning the Value of the Ship and Cargo respectively, in order to ascertain the Proportions each should bear towards paying a Ransom agreed to be given by the Master, to the Captain of a French Privateer, who had captured the Ship on her Passage to Hamburgh.*

KNOW ALL MEN, &c. (*obligation from one to one*, ut ante, p. 594.)

Recital of master of a ship having received a cargo to be delivered at Hamburgh.

WHEREAS the above bounden [*obligor*] did in the month of ——, 18—, receive on board the ship called the ——, whereof he was master, a cargo of wheat and barley, the property of the above named [*obligee*], to be

BOND, ON SUBMISSION TO ASCERTAIN SHARES CAPTURED SHIP AND CARGO SHOULD BEAR OF RANSOM.

transported from —— aforesaid to Hamburgh, and there to be delivered. And whereas the said [*obligor*] shortly afterwards sailed, and being on his passage taken by a French privateer (*a*), he agreed with the captain thereof for the ransom of the said ship and cargo for —— pounds, and delivered one of his servants to the said captain as an hostage for securing the due payment thereof. And whereas the said ship and cargo, soon after her arrival at Hamburgh, were appraised by persons on that behalf nominated, to the intent that the respective values thereof might be ascertained, and that both might rateably and proportionably, according to their values, bear an equal part of the said —— pounds. And whereas [*two insurers*], of, &c. having insured to the said [*obligee*] several sums of money upon the said *cargo, for the voyage above described, and consequently being interested in the valuation of the said ship and cargo, they and the said [*obligee*] have insisted, that the aforesaid appraisement of the said ship was partially or injudiciously made; and on that account differences as to the proportion which the said ship and cargo ought respectively to contribute towards payment of the said —— pounds, have arisen between the said parties: for adjusting whereof, the said [*obligor*] and [*obligee*] have agreed to submit the same to the determination of the persons hereinafter for that purpose named: *And* the said [*obligee*] hath undertaken that such determination shall be binding and conclusive to the said insurers, as to any claim or demand which they or either of them have or may have upon the said [*obligor*], by reason of the premises. Therefore the Condition of this obligation is such, that if the said [*obligor*] his executors and administrators, should on his and their part well and truly perform and keep the award and determination of [*two arbitrators*], of, &c. arbitrators indifferently named, as well on the part of

that the ship being taken on the passage by a French privateer, the master agreed with the captain to ransom the ship and cargo for a specific sum, and delivered one of his servants as an hostage; that the ship and cargo were respectively appraised at Hamburgh, to ascertain the proportionate part each should bear of the ransom;

[614*]

that two having insured the cargo to the merchant, they all three insisted that the appraisement of the ship was partially made; on which account differences have arisen;

for adjusting whereof, the master and merchant have agreed to submit to arbitration;

and the merchant hath

[(*a*) It is competent to arbitrators to inquire whether a ransom, for which the plaintiff seeks to be repaid, were justified by an extreme necessity within the statute 45 Geo. III. c. 72, sect. 16, which enables a Court of Admiralty to allow such necessity. *Miller* v. *Robe*, 3 Taunt. 461.—*Note by Mr. B.*]

Arbitrators may inquire whether the ransom be justified by necessity, within 45 Geo. III. c. 72.

the said [*obligor*], as of the said [*obligee*], to arbitrate, award, and determine of and concerning the premises; *So as* the said award be made in writing under the hands and seals of the said arbitrators, and ready to be delivered to the said [*obligor*] and [*obligee*], on or before the —— day of —— next ensuing the date hereof: AND in case the said arbitrators should not make such their award by the time last mentioned, then, &c. [*submission to umpire, &c.* ut ante, p. 595; *or enlarged time,* ut ante, p. 611.)

BOND, ON SUBMISSION TO ASCERTAIN SHARES CAPTURED SHIP AND CARGO SHOULD BEAR OF RANSOM.

agreed that the determination shall bind the insurers as to any claim on the master.

Condition to abide by the award of two arbitrators, so as it be made on a given day.

BOND, ON SUBMMITTING BREACHES OF HUSBANDRY COVENANTS.

*BOND *from One to One, on submitting to Three Arbitrators, or any Two of them, the Question whether any, and what Damages, have been occasioned by reason of the Lessee having managed a Farm contrary to the Four Years' Course of Husbandry, or by reason of any Breaches of any of the Covenants of the Lease, excepting in those Cases in which he has acted pursuant to the Permission of the Lessor; the Arbitrators to settle the Damages to be paid for such Breaches; and to direct the future Course of Husbandry, and whether any, and what Assurances shall be executed by the Parties: with several* AGREEMENTS *by the Obligor, adapted to the Circumstances of the Case; and that the Arbitrators may enlarge the Time for making their Award, to an unlimited Period.*

KNOW ALL MEN, &c. (*Bond from obligor to receiver*(*a*) *in the sum of* 1000*l.* ut ante, 594.)

(*a*) A Chancery receiver has no authority to make such a submission Chancery re-

BOND, ON SUBMITTING BREACHES OF HUSBANDRY COVENANTS.

Recital of lease of a farm to obligor.

[*616]

WHEREAS by indenture of lease, bearing date on or about the —— day of ——, 18—, and expressed *to be made between [*lessor*], esquire, since deceased, of the one part, and the above bounden [*obligor*], of the other part; for the considerations therein mentioned, the said [*lessor*] did demise and let unto the said [*obligor*], his executors and administrators, *A* certain messuage called ——, with the buildings, yards, lands, and appurtenances thereto belonging, situate in —— aforesaid, and in —— in the said county of ——, and then in the occupation of the said [*obligor*]: *To hold* the same unto the said [*obligor*], his executors and administrators, from the —— day of ——, 18—, for the term of twenty-one years thence next ensuing; *At* the yearly rent of —— hundred and —— pounds; *And* with, under, and subject to the covenants, conditions, and agreements therein contained, and on the part of the said [*obligor*], his executors and administrators to be paid, observed, and performed; *And* amongst them to a covenant that he the said [*obligor*], his executors and administrators, should and would use all the arable lands thereby demised, during the said term, in a good course of husbandry; and not sow, take, or reap from any part thereof, more than four successive crops of corn, pulse, or grain, (whereof turnips to be one,) before laying the land down again with a sufficient quantity of sound clover and rye-grass seeds on each acre: and should continue the same so laid down full two years. AND WHEREAS the said [*lessor*] died in or about the month of ——, in the year 18—. AND WHEREAS in pursuance of a decree of the high Court of Chancery, made and pronounced on the —— day of ——, 18—, and of a general order made on the —— day of ——, 18—, in a cause wherein [*lessor's heir*], an infant, (the eldest son of the said [*lessor*],) by [*mother*], his mother and next

Recital of covenant to cultivate according to the six years' course of husbandry.

Recital of lessor's death.

Recital of appointment of receiver by the Court of Chancery.

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ceiver cannot submit breaches of a lease, without the court's order.

as the above, without the direction of the court. The form is adapted to a common reference by landlord and tenant.

Reference to other forms grounded on the above submission.

See an award in pursuance of the above submission, *post*, title AWARD, Vol. 3, p. 25.

See a deed of covenants in pursuance of the award, *post*, COVENANT, title AWARD, Vol. 3, p. 149.

BOND, ON SUBMITTING BREACHES OF HUSBANDRY COVENANTS.

friend, was plaintiff, and [*four trustees*], trustees of the will of the said [*lessor*] deceased, and others were defendants, the said [*receiver*] was, by a report of (James Stephen,) esquire, one of the masters of the said court, (to whom the said cause stood referred,) bearing date the —— day of ——, 18—, duly appointed to be receiver of the rents and profits of the real estates of the said [*lessor*], deceased, in the said decree mentioned; and as part thereof, of the said *messuage, lands, tenements, [*617] and hereditaments comprised in, and demised by the said indenture of lease hereinbefore recited. AND WHEREAS the said [*obligor*] hath not farmed or cultivated the said arable lands according to the course prescribed by the said recited covenant (and which is called the six years' course of husbandry); the said [*lessor*] having in his lifetime, as he the said [*obligor*] alleges, agreed to dispense with the said covenant, and to permit the said [*obligor*] to farm the lands in the course of husbandry called the four years' course. AND WHEREAS the said [*receiver*] is willing to allow the said [*obligor*] the full benefit of the permission so given or alleged to have been given to him by the said [*lessor*] as aforesaid, to cultivate the said lands in the course of husbandry called the four years' course, up to the day of the date of these presents; but he alleges that the said [*obligor*] hath not farmed or cultivated the said lands according to the said course of husbandry called the four years' course; and also that he hath done, or omitted to do divers other acts, matters and things, contrary to, and in breach of the other covenants, conditions, and agreements, contained in the said indenture of lease; whereby the premises so demised to him as aforesaid have sustained great damage and injury. And whereas, in consequence of such breaches, or alleged breaches by the said [*obligor*] of such covenants as aforesaid, the said [*receiver*] lately threatened the said [*obligor*] to commence an action of ejectment (*b*) against him for the recovery of the possession of the said premises. AND WHEREAS, in order to prevent such action aforesaid, the said [*obligor*] hath proposed to the said [*receiver*],

Recital that obligor had not followed the six years' course of husbandry, he alleging that the lessor agreed to permit the four years' course.

Recital that receiver admits such permission;

but alleges obligor has not followed the four years' course;

and that he has broke other covenants, whereby the premises have sustained damage.

Recital that for such breaches receiver threatened to commence ejectment.

Recital that to prevent ejectment, obligor proposed receiver con-

(*b*) *Vide ante*, p. 426 (*l*).

BOND, ON SUBMITTING BREACHES OF HUSBANDRY COVENANTS.

and the said [*receiver*] hath consented and agreed that it shall be referred to [*arbitrator*], of ——, in the said county, farmer, (an arbitrator chosen by and on the behalf (*c*) of the said [*receiver*], and to [*other arbitrator*], of ———, in the said county, farmer, (an arbitrator chosen by and on the behalf of the said [*obligor*] and to [*third arbitrator*], of ———, in the same county, farmer, a person chosen and appointed by the said [*arbitrator*] and [*other arbitrator*] or any two of them, to settle *and determine by their award, to be made as hereinafter mentioned, whether any, and what damage, has been occasioned to the said farm and hereditaments comprised in the said indenture of lease, in consequence or by reason of the said [*obligor*] having at any time or times since the —— day of ——, 18—, farmed or otherwise managed the same contrary to the said four years' course of husbandry; or by reason or in consequence of the said [*obligor*] having since the time aforesaid committed any breach or breaches in otherwise acting contrary to any of the covenants, clauses, conditions, and agreements, in the said indenture of lease contained (*except*) a covenant to farm in the six years' course, hereinbefore recited; and except in all those cases in which it shall appear to the said arbitrators, or any two of them, that the said [*obligor*] hath acted pursuant to a permission given him by the said [*receiver*], or by the said [*lessor*] deceased: *And also* to settle and determine by the said award, what sum or sums of money (if any) shall be paid by the said [*obligor*] to the said [*receiver*], as a compensation for such damages; and in what manner and at what time and place the same shall be paid: *And also* to direct by the said award, in what order, course, and manner the said premises shall be farmed, managed, and carried on, during the remainder of the said term of twenty-one years; *And* whether any, and what agreements or other assurances, shall be made or executed by the said [*receiver*] and [*obligor*], or either of them.

sented, to refer to two mutual arbitrators, and a third appointed by them, or to any two of them, the question,

[*618] whether any, and what damage has been occasioned by reason of obligor having farmed contrary to the four years' course of husbandry;

or by reason of any breaches of covenants (except as to the six years' course, and cases in which he has acted by permission of receiver or lessor):

to settle the sums to be paid for such damages;

and to direct the future course of husbandry;

and what agreements shall be executed by receiver and obligor.

Condition to abide by award.

NOW THE CONDITION of the above written obligation is

(*c*) *Vide ante*, p. 582 (*a*).

such, that if the said [*obligor*], his heirs, executors, administrators, and assigns, should (*d*) for and on his and their parts and behalves, in all things well and truly stand to, obey, observe, perform, fulfil, and keep the award, arbitrament, judgment, final end, and determination of the said [*three arbitrators*], or any two of them, which they or any two of them shall make, of and concerning the several matters and things so agreed to be referred to them, as aforesaid: *And also* should pay all such sum and sums of * money, and make and execute such agreement or agreements or other assurances, as the said [*three arbitrators*], or any two of them, shall by their said award order, direct, or appoint: *And* should make such payment or payments respectively, and every of them, at such time or times, place or places, and in such manner as the said [*three arbitrators*], or any two of them, shall in and by their said award order and direct: *And also* should make and execute such agreement or agreements or other assurances, within the time or respective times to be thereby limited in that behalf; *So as* the said award or determination of the said [*three arbitrators*], or any two of them, be made in writing under their hands, or the hands of any two of them, ready to be delivered to the said parties, or such of them as shall require the same, on or before the —— day of —— next (*e*): *And also* if the said [*obligor*],

BOND, ON SUBMITTING BREACHES OF HUSBANDRY COVENANTS.

of three, or any two of them;

and to pay such sums, and execute such agreements as arbitrators shall award:

[*619]

so as the award be made by a given time;

and on request of arbitrators,

(*d*) *Vide ante*, p. 599 (*b*).

(*e*) As the parties agree, *post*, p. 621, that the arbitrators may enlarge the time for making their award, in this place the following addition seems requisite, in order that the nonperformance of an award made during the extended period may be a breach of the condition. *Brown* v. *Goodman*, 3 Durnf. & East, 592; *et vide post*, p. 634, 636, ENLARGEMENT OF TIME BY THE PARTIES, title ARBITRATION, note (*a*). For, although agreements are contained in the condition of the bond, yet it seems they are so far independent of it, that a nonperformance of any of them would be no breach of the condition, but merely subject the party to an attachment on the rule of court, or to an action on the agreement. See *Evans* v. *Thomson*, 5 East, 193, *et post*, *ubi supra*, note (*b*).

Where the arbitrators have power under an agreement in the bond to enlarge the time for making their award, it seems requisite that performance of an award to be made during the extended period should form part of the condition.

" or on or before such other day as the said arbitrators, or any two of them, shall by writing under their hands,

ENLARGED TIME.

BOND, ON SUBMITTING BREACHES OF HUSBANDRY COVENANTS.

his heirs, executors, or administrators, should, when thereunto requested by the said arbitrators, or any of them, and from time to time until such award or determination shall be made, bring and produce, or as he or they shall be requested, cause to be brought and produced before the said arbitrators, or any of them, all leases, agreements, deeds, papers, writings, vouchers, and evidences in his or their custody or power, relating to, or in anywise con-

to produce to them leases, &c.

[*620] *cerning the premises aforesaid, and the several matters and things so agreed to be referred as aforesaid, or any of them: *And also* if the said [*obligor*], his executors or administrators, in the mean time, and until such award and determination shall be made as aforesaid, and from time to time when thereunto requested by the said arbitrators, or any of them, should personally appear before the said arbitrators or any of them, or such person or persons, and at such place or places, as they or any of them shall appoint; and then and there, on his and their oath or respective oaths, to be administered in such manner and by such person as the said arbitrators, or any of them, shall direct, answer fully and truly to such interrogatories and questions as shall be demanded from him or them respectively, touching or concerning the several matters and things so agreed to be referred as aforesaid, *Then* the above mentioned bond or obligation shall be void and of no effect. AND *it is hereby mutually agreed*, that the said arbitrators, or any of them, shall have power to examine the parties and their witnesses on oath or affirmation: and to call for books, vouchers, and papers in the possession or power of either of the parties; which are to be produced on oath or affirmation: and to take the deposition of the parties and their witnesses in writing; which are to be signed by them respectively, or otherwise not to be admitted as evidence: And that the said arbitrators shall have full power and authority, if they should think proper, from time to time, and at all convenient times, until the said award or determination shall be made, either by themselves or by any person or persons to be

and to appear before arbitrators, be sworn, and answer questions;

Agreement that arbitrators shall have power to examine the parties and their witnesses on oath or affirmation:

to call for books, &c.

to take depositions in writing;

and to enter on demised lands, to see the condition thereof.

[to be indorsed on these presents] from time to time appoint: *Then* if," &c. *ut supra.*

BOND, ON SUBMITTING BREACHES OF HUSBANDRY COVENANTS.

appointed by them or any two of them for that purpose, to enter into and upon the said messuage or tenement, lands, hereditaments, and all other the premises comprised in the said in part recited indenture of lease, in order to see the state, condition, and usage thereof. AND *it is hereby further agreed*, that if either of the said parties should in the opinion of the said arbitrators, or any two of them, without good and sufficient cause, to be ascertained on oath or affirmation if required, to their satisfaction, by non-attendance, or non-production of books, papers or writings, or otherwise delay, or impede, or attempt to delay or impede *the said arbitrators in making their said award, the said arbitrators, or any two of them, shall be at liberty to proceed *ex parte*, after two days clear notice to the party or parties causing such delay or impediment as aforesaid, to be left at his or their usual dwelling or place of abode. AND *it is hereby agreed* that the said arbitrators, or any two of them, shall be at liberty, by writing under their hands respectively, to enlarge the time for making the said award, when, and as often, and to such time or times, as they shall think fit (*f*): *And* that the costs and charges of this bond or obligation, and all costs, charges, and expenses of and attending, or incidental to the said arbitration and award, shall be borne and paid by the said [*obligor*] and [*receiver*] jointly, or by either of them separately, as the said arbitrators, or any two of them, shall by their said award direct. AND *it is hereby further agreed*, that no suit or action, or other proceedings, shall or may be had, brought, or instituted against the said arbitrators, or any or either of them, for, or by reason, or on account of any award to be made by them under this reference; but that this agreement shall and may be pleaded in bar to any such suit or action. AND the said [*obligor*] doth hereby consent that this his agreement or submission, [and the award to be made pursuant thereto (*g*),] shall or may be made a rule or order

Agreement that if either party impede making award by non-attendance, &c. arbitrators to proceed *ex parte* after two days' notice.

[*621]

Agreement that arbitrators may enlarge the time for making their award to an unlimited period;

costs of reference to be subject to the award.

Agreement that no suit or action shall be brought against arbitrators on account of any award.

Consent of obligor, that submission shall be made a rule of court.

(*f*) *Vide post*, p. 628, (*b*), as to a submission where no time is limited.

(*g*) In *Harrison* v. *Grundy*, 2 Str. 1178, it was held, that a consent in the submission bond, to make the *award* a rule of court, instead of the submission, would not warrant the interposition of the court, under

If the parties consent that the *award* shall be made a rule of

BOND, ON SUBMITTING BREACHES OF HUSBANDRY COVENANTS.

of his *Majesty's Court of King's Bench, at Westminster, at the instance of the said [*receiver*], his executors or administrators.

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court, instead of the submission to the award, such a submission may be made a rule of court; but the proper method is to agree that the submission shall be made a rule of court.

the statute 9 & 10 Wm. 3, c. 15. *Ante*, pp. 576. 570, (*a*). See also *Anon.* 2 Barnard. 163. However, in *Pedley* v. *Westmacot*, 3 East, 603, where *Harrison* v. *Grundy* was cited, and it was objected to the court's entertaining jurisdiction, because the consent in the submission bond was to make the award a rule of court, instead of the submission to the award, which, it was said, was not within the words of the statute; the Court referred to the case of *Powell* v. *Phillips*, E. 30 Geo. 3, 2 Tidd's Prac. 7th edit. 854, furnished them by the Master, where the submission bond, stating that the award should be made a rule of court instead of the agreement, was holden to be no objection; and this, Lord Ellenborough said, was the later and more sensible determination; and therefore the objection in *Pedley* v. *Westmacot* was overruled. So if a bond of submission to arbitration between the trustee of a wife, and her husband, recite that a suit for a separation has been instituted between the husband and wife in the Commons; and that in order to put an end to any contest about the terms of separation, it had been agreed that all matters should be referred to *J. S.*; and that either of the parties should be "at liberty to apply to *the Court* to make the *award* a rule of court;" such submission may be made a rule of the Court of Common Pleas, under the statute 9 & 10 Wm. 3. *Soilleux* v. *Herbst*, 2 Bos. & Pull. 444. But the proper and usual method is to agree that the submission shall be made a rule of court.

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CERTIFICATE OF BEING SWORN BEFORE A JUDGE.

CERTIFICATE *of Parties and Witnesses having been* SWORN *before a Judge* (*a*).

IN THE KING'S BENCH,
(COMMON PLEAS, *or*
EXCHEQUER OF PLEAS.)

Between { Plaintiff, and Defendant.

THE above named plaintiff was sworn to give evidence

(*a*) When a cause is referred at the trial, it is usual to get the witnesses sworn before they leave the court, and under that oath they go

before [*arbitrators*], the arbitrators, to whom this cause *stands referred, this —— day of —— 18—.

CERTIFICATE OF BEING SWORN BEFORE A JUDGE.

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Before me,

[*Judge.*]

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before the arbitrators; 6 Ves. 820; otherwise (if required) they must be sworn before a judge. The order of *nisi prius* being obtained from the clerk of *nisi prius*, or associate in London or Middlesex, or from the associate at the assizes, the arbitrator will make an appointment in writing, of a time and place for the parties and their witnesses to attend him; which appointment should be subscribed to a copy of the order of *nisi prius*, and served therewith on the defendant's attorney. Previous to the meeting, the arbitrator should be furnished with a state of the case, and the names of the witnesses, &c. A similar mode of proceeding is to be observed, where the reference is by agreement without suit; 2 Tidd's Prac. 857, 7th ed.

Practice as to swearing the witnesses, when a cause is referred at the trial.

Preliminaries to the arbitration.

Lord Hardwicke was of opinion, that the persons interested might, by an agreement in writing, give to the arbitrators a power to examine the parties, as well as the witnesses, on oath, excepting in cases of frauds, impositions, and concealments; *Wellington* v. *Mackintosh*, 2 Atk. 570. But in *Halfhide* v. *Fenning*, 2 Bro. C.C. 337, Lord Kenyon said, Lord Hardwicke's opinion must be misreported, as the parties could not give the arbitrators such a power. And in *Street* v. *Rigby*, after referring to Lord Hardwicke's opinion, Lord Eldon held, that arbitrators have not power to administer an oath, unless received under the authority of the court; and "the court, if it is not part of the agreement, cannot give them authority to examine upon oath; and the agreement itself cannot authorize any person to administer an oath." Therefore a difficulty arises from the want of the conscience of the witness; 6 Ves. 821, 820, 818.

The parties cannot authorize arbitrators to administer an oath.

On submissions to arbitration by bond or deed, when the arbitrator is to hold his sitting in London or the neighbourhood, the parties (if they are to be examined) and their witnesses are generally sworn before a Judge or a Master in Chancery. On such a reference to arbitration in the country, where it is thought requisite to have the evidence on oath, if either of the solicitors is a Master Extraordinary in Chancery, or a Commissioner authorized to take affidavits by the statute 29 Car. II. c. 5, he swears the parties and witnesses separately before the arbitrators; but where that is not the case, they are sworn at the house of such a person. However, on references to arbitration, by the agreement of the parties, as the oath is not administered in a judicial proceeding, a witness may, in *foro conscientiæ*, incur the guilt, but at the same time

Practice as to swearing witnesses on references by agreement.

But such oaths are extra judicial.

CERTIFICATE OF BEING SWORN BEFORE A JUDGE.

Or, In the Arbitration,

Between { [*obligor*] and [*obligee*].

A. B., *C. D.*, *E. F.*, *G. H.* The witnesses named in the margin were sworn to give evidence before [*arbitrators*], to whom certain matters in difference between the above named parties stand referred, this —— day of —— 18—.

Before me,

[*Judge*].

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evade the temporal penalties of perjury. See 3 Inst. 164-5; 4 Bla. Com. 137.

As to examination of witnesses, &c. upon oath.

[Where an order of reference directed, that the witnesses should be sworn before a judge or "*a commissioner duly authorized*," it was held that this did not authorize the arbitrator, who was a commissioner appointed by the court under the statute, to swear a witness to a *viva voce* examination, he being a commissioner for taking *affidavits* only. *Rex* v. *Hanks*, 3 Carr. & Pay. 419.]

It deserves consideration, whether the party injured by the false statement of a witness, could not maintain against him an action for damages.—*Note by Mr. B.*]

[Where an order of reference empowers the arbitrator to examine the parties to the suit upon oath, he may examine a party in support of his own case. *Warne* v. *Bryant*, 3 Barn. & Cress. 590; S. C. 5 Dowl. & Ryl. 301.]

CERTIFICATE OF BEING SWORN BEFORE A COMMISSIONER OR MASTER IN CHANCERY.

*CERTIFICATE *of Parties and Witnesses having been sworn before a Commissioner, or a Master ordinary or extraordinary in Chancery.*

IN THE KING'S BENCH, &c. *(ut ante,* 623.)

Between { Plaintiff, and Defendant.

A. B. of, &c. esquire, *C. D.* of, &c. merchant, and *E. F.* of, &c. gentleman, being severally sworn and examined, each for himself, upon his oath saith, that he will true answer make to all such questions as shall be asked him by and before [*arbitrators*], the arbitrators to whom this cause stands referred.

A. B.
C. D.
E. F.

ALL sworn before me, at —— in the county of —— this —— day of —— 18—.

G. H.
A Commissioner.

IN THE ARBITRATION,

Between { [*obligor*], and [*obligee*].

A. B. of, &c., *C. D.* of, &c., and *E. F.* of, &c., were sworn to give evidence (*a*) before [*arbitrators*], the arbitrators to whom certain matters in difference between the above named parties stand referred, this —— day of —— 18—,

A. B.
C. D.
E. F.

before me,

[*Master*], (*or* a Master Extraordinary in Chancery.)

(*a*) *Vide post,* note (*c*), to the first precedent, title AWARD.

COVENANT BY SEVERAL, TO REFER DISPUTES RESPECTING TESTATOR'S EFFECTS, &c.

*COVENANT *by Executors* (a) *and several Legatees to abide by the Award of Three Arbitrators, or any Two of them, respecting the estate and Effects of the Testator, and other Matters in Dispute; and adapted to the Circumstances of a* REFERENCE *by Co-partners, &c.* IN PURSUANCE OF A COVENANT *contained in the Articles of Co-partnership, &c.*

Parties.

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—; BETWEEN [*E. G.*], of, &c.

[(a) As to the power of executors or administrators, and assignees of bankrupt, to refer to arbitration, and the cautions to be observed by them in making such reference, *vide post*, Vol. 3, pp. 89, 90. 140. The late Act for the relief of Insolvent Debtors, 7 Geo. 4, c. 57, s. 24,

Power of assignees of insolvents to sue in their own names;

provides, " that it shall and may be lawful for the assignee or assignees of any such prisoner, and such assignee or assignees is and are hereby empowered, to sue from time to time, as there may be occasion, in his or their own name or names, for the recovery, obtaining, and enforcing of any estate, effects, or rights of such prisoner; but in trust for the benefit of such assignee or assignees, and the rest of the creditors of

to make composition for debts;

such prisoner, according to the provisions of this act; and to give such discharge or discharges to any person or persons who shall be respectively indebted to such prisoner, as may be requisite; and to make compositions with any debtors or accountants to such prisoner, where

to submit differences to arbitration;

the same shall appear necessary; and to take such reasonable part of any such debts as can upon such composition be gotten in full discharge of such debts and accounts; *and to submit to arbitration any difference or dispute* between such assignee or assignees, and any person or persons, for or on account or by reason of any matter, cause, or thing relating to the estate and effects of such prisoner: provided nevertheless,

but not to compound, submit to arbitration, nor commence suit in equity,

that no such composition, *or submission to arbitration*, shall be made, nor any suit in equity be commenced by any such assignee or assignees, without the *consent in writing* of the *major part in value of the creditors*

and [*J. A.*], of, &c. executors of the last will and testament of [*testator*], late of, &c. deceased, of the first part; [*P. M. G.*], one of the grandchildren of the said [*testator*], deceased, by his daughter, late the wife of the said [*E. G.*], now also deceased, of the second part; the said [*P. M. G.*], the said [*J. A.*], husband of [*E. A.*], the only surviving daughter of the said [*testator*], deceased, [*J. B.*] the younger, of, &c. husband of [*L. G.*], granddaughter of the said [*testator*], deceased, [*E. G.*] the younger, of, &c. [*Jos. G.*], of, &c. [*John G.*], of, &c. [*P. A.*], of, &c. and [*S. A.*], of, &c. all grandchildren of the said [*testator*], deceased, of the third part (*b*).

COVENANT BY SEVERAL, TO REFER DISPUTES RESPECTING TESTATOR'S EFFECTS, &c.

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of such prisoner, who shall meet together pursuant to a notice of such meeting, to be published at least fourteen days before such meeting in the London Gazette, and also in some newspaper most usually circulated in the neighbourhood of the place where such prisoner had his or her last usual residence before his or her imprisonment as aforesaid, nor without the approbation of the said court, or of one of the commissioners thereof."]

without consent of creditors and the court.

(*b*) If the submission be made by copartners, &c. in pursuance of a covenant contained in the articles of copartnership, &c. say,

REFERENCE IN PURSUANCE OF A COVENANT.

"WHEREAS by articles of copartnership (*or* agreement) bearing date on or about the —— day of ——, 18—, and made between the said —— of the one part, and the said —— of the other part, amongst other things, *It was covenanted and agreed*, that in case any dispute or question should arise between the said parties relative to the construction of the said articles, or to all or any of the matters or things therein contained, the same should be referred to the arbitration of two indifferent persons, one to be named by each of the parties, with power for such arbitrators to appoint an umpire in case of their disagreement: *And* that the award of the said arbitrators or umpire should be final and conclusive. AND WHEREAS disputes have arisen between the said parties relating to their copartnership, (and also relating to several other matters and things,) and they have in pursuance of the said covenant,† agreed to refer the same," &c. (*reference*

Recital that disputes have arisen.

† A court of equity will not decree a specific performance of a cove-

Equity will not

COVENANT BY SEVERAL, TO REFER DISPUTES RESPECTING TESTATOR'S EFFECTS, &c.

Recital of disputes respecting the estate and effects of a testator, and several other matters;

WHEREAS some *differences and disputes have arisen, and are still depending between the said [*E. G.*], the elder, and [*J. A.*], as executors as aforesaid, and the said [*P. M. G.*]; and also between the said executors and the said [*J. A.*] in right of his wife, the said [*E. A.*], the said [*P. M. G.*], the said [*J. B.*], the younger, the said [*E. G.*], the younger, the said [*Jos. G.*], the said [*John G.*], the said [*P. A.*], and [*S. A.*], in their respective rights and qualities above mentioned, touching the estate and effects of the said [*testator*], deceased; and otherwise relating thereto: and also *touching several other matters and things in dispute between the said parties (*c*): *And* in order to put an end to the said differences and disputes, and to obtain an amicable adjustment thereof, the said parties (*d*) have, and each and every of them hath, agreed

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and agreement to refer the same to the award of three arbitrators, or any two of them.

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to two, with power to nominate a third to join with them, or an umpire, ut ante, p. 602. 598.)

(*c*) *Vide ante,* p. 574, (*b*).

It seems a testator cannot subject the construction of his will to arbitration.

[(*d*) It has been said, that no man could appoint by his will, that if any difference should arise on the construction of it, that it should be determined by J. S. and that his determination should be final. Skin. 454. 471; cited 2 Kyd on Corporations, 206. But supposing the law

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enforce a specific performance of a covenant to nominate arbitrators.

nant or agreement in articles of copartnership, &c. to nominate arbitrators to settle disputes; nor, unless there be a reference depending, or made and determined, will such a covenant or agreement oust the courts of law or equity of their jurisdiction; 2 Wooddeson's Lect. 135; and therefore it cannot be pleaded in bar to an action at law; *Kill* v. *Hollister,* 1 Wills. 129; *Thompson* v. *Charnock,* 8 Durnf. & East, 140; nor is such a plea any bar to a bill for discovery and relief in equity. *Street* v. *Rigby,* 6 Ves. 818; *Mitchell* v. *Harris,* 2 Ves. jun. 132. *S. C.* 4 Bro. C. C. 311. See also *Agar* v. *Macklew,* 2 Sim. & Stu. 423. At law, it seems, no action can be maintained for refusing to perform such an agreement; *Tattersall* v. *Groote,* 2 Bos. & Pull. 135; at least, only nominal damages can be recovered. 6 Ves. 818—9. The prudential way of drawing such articles is to have an agreement for liquidated damages, in order to enforce a specific performance.‡ But, it seems, if the party enforces his legal remedy by such a stipulated security, he would not also have a remedy in equity.

Proper method is to fix the stipulated damages.

[‡ As to such agreements, *vide post,* Vol. 3.]

to refer the same to the award, order, arbitrament, and final determination of [*three arbitrators*], of, &c. or any two of them, arbitrators indifferently elected and named by and on behalf of the said parties respectively, to award, order, arbitrate, judge, and determine of and concerning the said differences and disputes between the said parties respectively. NOW THIS INDENTURE WITNESSETH, that they the said [*E. G.*], the elder, and [*J. A.*], as executors as aforesaid, and the said [*P. M. G.*], [*J. B.*], the younger, [*E. G.*], the younger, [*Jos. G.*], [*John G.*], [*P. A.*], and [*S. A.*], do, and each and every of them doth, each for himself and herself, severally and respectively, and for his and her several and respective heirs, executors, and administrators, covenant, promise, and agree to and with each other, his and her heirs, executors, and administrators, respectively, well and truly to stand to, obey, abide by, observe, perform, fulfil, and keep the award, order, arbitrament, and final determination of the said [*three arbitrators*], or any two of them, of and concerning the premises aforesaid, or any thing in any wise relating thereto; *And also* of and concerning all, and all manner of action and actions, cause and causes of action, suits, bills, bonds, specialties, covenants, contracts, promises, accounts, reckonings, sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, both at law and in equity, at any time heretofore had, made, moved, brought, commenced, sued, prosecuted, committed or depending by, or between the said parties, or any of them; *So as* the said award of the said arbitrators, or of any two of them, be made in writing under their hands, or under the hands of any two of them (*e*). *And it is also*

COVENANT BY SEVERAL, TO REFER DISPUTES RESPECTING TESTATOR'S EFFECTS, &c.

Testatum.

Covenant by the parties severally to abide by the award.

Agreement that

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to be so, although it seems the liberality of our courts in modern times would determine otherwise, yet the question may be easily avoided by making all the devises and bequests subject to such a condition.—*Note by Mr. B.*]

(*e*) Where the submission limits no time for making the award, it will be restrained to a reasonable time; and if, in such a case, either of the parties request the arbitrators to make an award within a reasonable time, and after such request they neglect or refuse to do it, the

Where the submission limits no time, the award must be made within

COVENANT BY SEVERAL TO REFER DISPUTES RESPECTING TESTATOR'S EFFECTS, &c.

submission shall be made a rule of court;

that parties will not prosecute any action or suit against the arbitrators, or prefer any bill against each other, until the award be delivered;

and that the costs of arbitration shall be paid pursuant to the award.

Nomine pœnæ.

Testimonium.

**agreed,* by and between the said parties, that these presents, and the submission hereby made of the said matters in controversy, shall be made a rule of his Majesty's Court of King's Bench, at Westminster; to the end that the said parties respectively may be finally concluded by the said arbitration, pursuant to the statute in that case made and provided. AND the said parties do hereby further agree, that none of them shall or will prosecute any action or suit in any court of law or equity, against the said arbitrators, any, or either of them, or bring or prefer any bill in equity against each other concerning the premises, until the said award be made and delivered: ALSO that all costs and charges attending the present arbitration shall be in the discretion of the said arbitrators, or any two of them, and be paid and satisfied pursuant to their award. AND for the full performance of the award so to be made as aforesaid, the said parties bind themselves severally and respectively, their several and respective heirs, executors, and administrators, each to the other of them respectively, in the penal sum of (five) thousand pounds, of good and lawful money of Great Britain, firmly by these presents (*f*). IN WITNESS whereof they have hereunto set their hands and seals respectively, the day and year first above written.

Attestation.

SIGNED, SEALED, AND DELIVERED, (being first duly stamped (*g*)) in the presence of us,

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a reasonable time.

party may revoke the authority given to the arbitrators, and it will be no breach of the submission. *Newgate* v. *Degelder,* 2 Keb. 10, 20, *S. C.* Sid. 415, pl. 16. *Curtis* v. *Potts,* 3 Maule & Selw. 147. What shall be a reasonable time, the court is to determine. Com. Dig. *Temps,* (D). The same doctrine is applicable where the arbitrators have power to enlarge the time for making their award to an unlimited period.

(*f*) See an award in pursuance of the above submission, *post,* Vol. 3, title AWARD.

Stamp.

(*g*) Stamp, *one pound fifteen shillings,* 55 Geo. 3, c. 184. Schedule, part I. tit. DEED.

*COVENANT *by Several*(a) *with Two, to abide by the Award of Three Arbitrators, respecting Disputes between them; under a Penalty severally for Non-Performance.*

COVENANT BY SEVERAL, UNDER A PENALTY.

WHEREAS many disputes and differences are depending between [*covenantor*], of, &c. and other the persons whose names and seals are hereto set and subscribed, or some of them, on the one part; and [*covenantee*], of, &c., widow, and [*other covenantee*], her daughter, or one of them, on the other part. AND WHEREAS as well the said [*covenantor*] and other the persons whose names and seals are hereto set and subscribed as aforesaid, as the said [*covenantee*] and [*other covenantee*], have submitted, and do hereby respectively submit the said disputes and differences to the award and determination of [*three arbitrators*], of, &c. *So as* the said award be made in writing under the hands and seals of the said arbitrators, and ready to be delivered to the said parties, on or before the —— day of —— next. NOW BE IT KNOWN, that the said [*covenantor*], and other the persons whose names and seals are hereto set and subscribed as aforesaid, do hereby severally, and for their respective heirs, executors, and administrators, covenant, promise, and agree to and with the said [*covenantee*] and [*other covenantee*] severally, their respective executors and administrators, that they the

Recital of disputes between several covenanting parties and two covenantees.

Submission to the award of three arbitrators.

Covenant severally to abide by award,

(a) [Where a partnership firm enters into an agreement to refer to a third person, all the partners should execute it, for a submission to arbitration not being a transaction in the ordinary course of business, an individual partner has not the power of binding the firm. *Stead* v. *Salt*, 10 J. B. Moore, 389. *S. C.* 3 Bing. 101. But in several cases, a deed executed by one partner in the presence and with the privity of the others, has been held to be binding on them. *Vide post*, Vol. 5, p. 142; and see *Burn* v. *Burn*, 3 Ves. 578.]

Partners not bound by agreement to refer.

COVENANT BY SEVERAL, UNDER A PENALTY.

said [*covenantor*] and other the persons whose names and seals are hereto set and subscribed as aforesaid, shall and will abide by, and well and truly perform and keep the award and determination of the said arbitrators concerning the premises to be made as aforesaid. AND for the true performance of the said award on their part, the said [*covenantor*] and other the persons whose names and seals are hereto set and subscribed as aforesaid, do hereby severally and respectively bind themselves and their respective heirs, executors, and administrators, unto the said [*631] *[*covenantee*] and [*other covenantee*] severally, and their respective executors and administrators, in the penal sum of (fifty) pounds. IN WITNESS whereof the said covenanting parties have hereto set their hands and seals the —— day of ——, 18—.

under a penalty.

SIGNED, &c. *ut ante*, p. 629.

ENLARGEMENT OF TIME BY ARBITRATORS.

ENLARGEMENT *of the Time for making an Award by the* ARBITRATORS, *under a Power in the Submission* (*a*).

WE the undersigned arbitrators, by virtue of the power to us given for this purpose, *do* hereby appoint, extend,

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The time may be enlarged by consent.

(*a*) If the arbitrators cannot make their award within the time limited by the rule of court, or order of *nisi prius*, a rule may be obtained, by *consent*, for enlarging it; or where the submission is by agreement without suit, the time may be enlarged by *consent* of the parties. 2 Tidd's Prac. 858, 7th edit.

Practice on enlargement by rule of court.

When it is supposed that the application for the rule will not be resisted by the other party, it is sufficient to give him notice of the intended motion, and then to move the court upon an affidavit of such notice; though it is usual that there should be a consent signed by the counsel for the opposite party. When it is apprehended that the application will be opposed, the party wishing to enlarge the time should come prepared with an affidavit, stating the circumstances of

*and (*b*) enlarge the time for making our award until (*c*) the —— day of —— now next ensuing (*d*); on or before

ENLARGEMENT OF TIME BY ARBITRATORS.

the case, and move for a rule upon the other party, calling on him to show cause why such enlargement should not take place. Caldwell on Arbitration, 49. But before this rule can be obtained, a motion must be made for making the order of *nisi prius* or *agreement* a rule of court. 2 Tidd's Prac. 859, 7th edit. Where the arbitrators, under a submission by bond or deed, require an extended time for making their award, and they have no power by the submission to enlarge the time themselves, and some of the parties will not consent to an enlargement, the best mode of proceeding seems to be, to make the submission a rule of court, *vide ante*, p. 571; and then, on showing sufficient reasons for it, the court will enlarge the time. See the recital of such enlargement, *post*, second precedent, title AWARD.

The time for making an award under a submission, by agreement made a rule of court, may be enlarged by the court.

(*b*) If it be the case, say,

FURTHER ENLARGEMENT.

"further enlarge,"

Where a cause was referred under a judge's order, with a *proviso* that the arbitrator should make his award on or before a day certain; but if he should not be then prepared that the time should be enlarged from time to time as he might require, and a judge of the court might think reasonable and just; the Court of King's Bench held, that the time for making the award was duly enlarged, by the arbitrator indorsing on the order, on the day preceding the expiration of the original time, that he required further time; although the judge's order granting such further time was not obtained until a day subsequent. *Reid* v. *Fryatt*, 1 Maule and Selw. 1. But where, in a similar case, the indorsement was dated on a day subsequent to the expiration of the time originally given for making the award, that court discharged a rule *nisi* for an attachment, for non-performance of the award. *Good* v. *Wilks*, H. 56 Geo. 3, K. B. 2 Tidd's Prac. 859, 7th edit.

If a judge's approbation be requisite, and the arbitrator enlarges previous to the time limited, the judge's subsequent assent is sufficient:

but it is otherwise if the arbitrator enlarges after the time limited.

(*c*) When the time is enlarged "until" a particular day, the word "until" is for this purpose inclusive; and the award may be made on that day. *Knox* v. *Simmonds*, 3 Bro. C. C. 358. For the word "until" may be construed either exclusive or inclusive of the day to which it is applied, according to the context and subject-matter. *The King* v. *Stevens*, 5 East, 244.

"Until," is for this purpose inclusive.

(*d*) If the time fixed be not the ultimate extended period limited by the submission, the remainder of the above form had better be omitted. For where the *ita quod* was, so that the arbitrator should make his award before the 10th of November, or any other *day* to which he should enlarge it, he had first enlarged the time, and then after the 10th of November, and before the expiration of the period for which it stood

If an arbitrator has power to enlarge the time for making his award to any other *day*,

ENLARGEMENT OF TIME BY ARBITRATORS.

which said day, our award in writing, of and concerning the matters in difference within mentioned and referred to us, shall be made and published. WITNESS (*e*), &c. *ut ante*, p. 593.

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the Court will expound it to mean to any other *days*.

enlarged, had enlarged it again, and had not made his award until after the day to which the time was first enlarged; the Court decided, as they had before done in *Payne* v. *Deacle*, 1 Taunt. 509, that this was no excess of the arbitrator's power. *Barrett* v. *Parry*, 4 Taunt. 657. [Where an arbitrator has power to make "an application" to the court for enlargement of the time for making his award, he may make several applications, and is not *functus officio* at the expiration of the time granted by the first enlargement. *Anon.* 2 Chit. Rep. 45.—*Note by Mr. B.*]

An enlargement of the time for making an award, signed before the expiration of the submission, does not require a *stamp*, unless it be delivered as a deed:

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(*e*) *Vide post*, p. 637, (*d*). As it has been held by Lord Kenyon at *nisi prius*, that a subsequent * memorandum indorsed on a deed, altering some of the terms of it, does not require to be stamped, *Herne* v. *Hale*, 3 Esp. Rep. 237, (see also *Robinson* v. *Macdonnell*, 5 Maule and Selw. 234), and as the appointment of an umpire in writing, although under hand and seal, does not require a stamp, unless it be delivered as a deed, *ante*, p. 588, (*d*), it therefore seems to follow, as a necessary consequence, that an enlargement of the time for making an award, if under hand only, or if under hand and seal, if it be not delivered as a deed, does not require a stamp, whether the enlargement be made by the arbitrators or umpire, or by the parties in difference; provided such enlargement by the arbitrators be made in pursuance of a power contained in the original submission, or subsequently given by the parties before the expiration of the arbitrators' authority, and provided such enlargement by the parties be made before the arbitrators' authority under the original submission or under an enlargement, ceases by lapse of time. See *The King* (in aid of *Mytton*) v. *Hill*, 7 Price, 644, *post*, Vol. 3, as to an enlargement under an order of reference. And see *Evans* v. *Thompson*, 5 East, 192, *post*, p. 636, (*c*), where the authority of the arbitrators and umpire was kept alive only by unstamped indorsements, until the last indorsement, which had an agreement stamp; but Lord Ellenborough treated all the agreements as being valid, although he looked on the stamped agreement as being to a certain extent dependent on the unstamped agreements, and not as a distinct agreement reviving an authority which had ceased; for the authority must have ceased, if it had been requisite that the prior enlargements should have been stamped. Where a general reference is made, and the time is enlarged by the parties, it seems impossible to contend successfully, that an agreement stamp is necessary, because it is not certain that "the matter thereof shall be of the value of twenty pounds, or upwards;" in

which case only an agreement stamp is requisite for any purpose. See the 55 Geo. 3, c. 184, Sched. part i, title AGREEMENT.

ENLARGEMENT OF TIME BY ARBITRATORS.

If the authority of the arbitrators or umpire has actually determined, it seems clear that it cannot be revived without a new agreement, deed, or bond, properly stamped and executed, and incorporating by reference all the terms of the original submission. See *Evans* v. *Thompson*, 5 East, 193, *post*, p. 636. *Good* v. *Wilks*, *ante*, p. 632, (*b*). But see *The King* v. *Hill*, *ut supra*, as to an enlargement under an order of reference. [But if a party proceeds in the reference with the knowledge that the arbitrator's authority is determined, he precludes himself from subsequently objecting to the validity of the award on this ground, *Lawrence* v. *Hodgson*, 1 You. & Jerv. 16. See also in the matter of *Hick*, 8 Taunt. 694.]

But if the arbitrators have become *functi officio*, a stamp is requisite to revive their authority.

Wherever there is the least doubt, it seems prudent to have the instrument properly stamped before it is executed, in order to avoid paying the penalty, in case a stamp should be requisite before the instrument can be received in evidence. *Vide ante*, p. 366; *Robinson* v. *Macdonnell*, 5 Maule & Selw. 234. [And see *Watkins* v. *Philpotts*, 1 M'Clel. & You. 393.]

Where there is any doubt, a stamp should be used.

But for some purposes the submission may be supported as a *parol* submission. *Vide ante*, pp. 575. 578; *post*, p. 635, (*b*), *ad finem*. *Purslow* v. *Bailey*, 2 Ld. Raym. 1040. Wms. n. 1 Saund. 62 *b*, (5).

Dernier resort, *parol* submission.

[In the case of *Watkins* v. *Philpotts*, 1 M'Clel. & You. 393, bonds of submission were executed, dated the 9th December, by which the time for making the award was limited to the 1st of February; and on the 4th of January the parties re-executed the bonds, having altered the 1st of February to the 4th of March, and subsequently re-stamped the bonds. An objection was taken to the award, on the ground that the arbitrator had awarded interest to the 12th of December, whereas he had no authority to extend it beyond the date of the bonds, as originally executed; but the Court was of opinion that the 4th of January was for this purpose to be considered as the period of submission.]

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ENLARGEMENT *of the Time for making an Award, by the* PARTIES *in Difference.*

ENLARGEMENT OF TIME BY PARTIES.

KNOW ALL MEN BY THESE PRESENTS, *That* WE, the within named [*parties in difference*], for ourselves

ENLARGEMENT OF TIME BY PARTIES.

severally and respectively, and for our several and respective heirs (*a*), executors, and administrators, *do* hereby give, grant, and allow unto the within named [*arbitrators*], further time for making their award of and concerning the several matters within referred to them, until the

Consent that

—— day of —— now next ensuing: [(*b*) AND we do

(*a*) *Vide post*, p. 637, (*d*).

To make the parties liable to the penalty of their bonds for the enlarged period, the penalty should also be extended, or there should be new bonds.

(*b*) In order to make the parties liable to an action on their bonds to recover the penalty for non-performance of an award made during the enlarged period, there should either be such an addition as the following, [which should be under the hands *and seals* of the parties, *Greig* v. *Talbot*, 3 Dowl. & Ryl. 446. S. C. 2 Barn. & Cress. 179, and see *post*, p. 637.] or the parties should execute new bonds; for otherwise they will only be liable to an attachment for non-performance of the award. *Vide ante*, pp. 609. 619, (*d*).

EXTENSION OF PENALTY TO ENLARGED PERIOD.

"AND we do hereby respectively for ourselves, and for our respective heirs, executors, and administrators, consent and agree, that the penalties mentioned in the several bonds entered into by us touching the matters in difference, shall be extended to, and shall or may be recoverable against such of us the said parties respectively, and our respective heirs, executors, and administrators, as shall neglect or refuse to abide by and perform the award which shall be made by the said arbitrators, touching the matters in difference, during the enlarged time hereby given for making the same award, as fully and effectually in all respects, as if the said enlarged time had been mentioned in the conditions of the said several bonds, instead of the time thereby limited."

Where by the agreement of the parties only the time is enlarged for making the award, the penalty of the bond is not extended to an award made under the new agreement.

Thus in *Brown* v. *Goodman*, 3 Durnf. and East, 592, n. in debt on bond. The bond was a common arbitration bond, in which the time was limited for the arbitrator to make his award. The declaration stated that the time was afterwards, by the mutual consent of both parties, enlarged, within which enlarged time the arbitrator made his award, and it then stated the breach, &c.: to this there was a demurrer. After argument at the bar, Lord Kenyon, Ch. J. said, that the question was not then to be discussed, whether the party had not some remedy, but whether his remedy lay on the bond; to determine which the court must look to the bond; and there it appeared that the defendant had bound himself to abide by an award under a penalty, if made within a given time: but that could never extend the penalty to an award made

*hereby consent and agree (c), that if it should be requisite, these presents, as well as the within written bond or

ENLARGEMENT OF TIME BY PARTIES.

extended submission shall be made a rule of court.

after that time under a new agreement. To which the other judges assenting, judgment was given for the defendant.

The plaintiff should have proceeded by action of *debt*, or *assumpsit*, on the submission implied in the agreement to enlarge the time. 2 Tidd's Prac. 865, 7th ed.

(c) The part in crotchets was formerly introduced in consequence of the decision in *Jenkins* v. *Law*, 8 Durnf. & East, 87; it is now perfectly useless; but it can do no harm. In that case, the parties, having entered into arbitration bonds, with the usual agreement that the submission should be made a rule of court, it was accordingly made a rule of court. Afterwards the parties, by an indorsement on the bond, and signed by both of them, agreed that the time for making the award should be enlarged: but it was not added, as a part of this agreement, that the indorsement should be made a rule of court. The arbitrator made his award within the enlarged time. A rule having been obtained, calling on the defendant to show cause why an attachment should not issue against him for not performing the award, Garrow, who now showed cause, objected, that there being no agreement to make the consent for enlarging the time for making the award a rule of court, no attachment could issue as for a contempt of the court. Bayley, in support of the rule, admitting that this objection was fatal, the court discharged the rule. The report does not state whether the agreement was stamped. But in a later case, where the parties, by their respective bonds of submission, dated 20th of August, 1803, bound themselves to submit certain matters in difference to the arbitration of *A.* and *B.*; and if they did not make their award on or before the 21st of September then next, then to the umpirage of *C.* so as he made his umpirage on or before the 24th September, 1803. By a memorandum on the bonds, dated 21st September, it was thereby agreed between the parties, that the time for the arbitrators making their award should be extended from that day unto the 24th of September aforesaid, and for making the umpirage to the first of October: and by another indorsement on the bonds, signed by the parties on the 28th of September, the time for making the umpirage was further extended to the 6th of October, which indorsement was stamped with an agreement stamp. An umpirage was made on the 5th of October. In the bonds of submission it was provided, that the bonds and submission thereby made, should be made a rule of court, pursuant to the statute, if either of the parties should require the same, and the court should so please. But when the time for making the award was agreed to be enlarged by

Where it is agreed that an arbitration shall be made a rule of court, and the parties, by an indorsement, enlarge the time for making the award, the indorsement virtually includes all the terms of the original submission, and amongst others, that the submission for such enlarged time shall be made a rule of court; and consequently, the party is liable to an attachment for non-performance of an award made within such enlarged time, under the 9 & 10 Wm. 3, c. 15.

ENLARGEMENT OF TIME BY PARTIES.

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obligation (*or* indenture), and the submission thereby and hereby made of the matters in controversy, shall be made a rule of his Majesty's Court of King's Bench, at *Westminster, at the instance of either of the said parties, his or

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the indorsement on the bonds before mentioned, it was not added, that that should be made a rule of court; but the agreement to enlarge was made a rule of court. A rule was obtained on the authority of *Jenkins* v. *Law*, and it was objected on the part of the defendant, that an agreement to enlarge the time for making an award must contain a new consent that it shall be made a rule of court, otherwise no award made within such enlarged time can be enforced by attachment. Lord Ellenborough said, it was a case of considerable consequence, affecting the practice of all the courts upon the construction of a very beneficial act of parliament; and therefore, before the court gave their final opinion they would consult with the other judges: though, as at present advised, it appeared to him that the *memoranda* endorsed on the submission-bond for enlarging the time did, by necessary construction, virtually incorporate all the conditions in the bond to which they had reference. That they must be taken to do so to a certain extent was apparent; for in themselves the *memoranda* did not even specify the names of the arbitrators or umpire, nor the subject-matter of the reference; and if any part were adopted, he could not see what line could be drawn, and why the whole must not be adopted. *Curia advisare vult.* In delivering the judgment of the court on a subsequent day, and after referring to *Jenkins* v. *Law*, his lordship said, " Upon considering that case, in which the objection appears to have been given way to without any argument on the part of the counsel who had obtained the rule for an attachment, and on which account the matter was probably not brought under the immediate view and attention of the court; and upon conferring, with a view to an uniformity of practice on this subject, with most of the judges of the other courts of Westminster Hall, we are of opinion, that the case referred to cannot be supported; and that the agreement to enlarge the time for making the award must be understood as by reference, virtually incorporating in itself all the antecedent *agreements* between the parties relative to that subject, as if the same had been formally set forth and repeated therein, and of course incorporating, amongst the rest, the agreement contained in the condition of the bond, that the submission to arbitration should be made a rule of court; and that, with reference to the enlarged time, instead of the time originally specified in the condition of the bond." Rule discharged, and rule for attachment absolute. *Evans* v. *Thomson*, 5 East, 193.

her executors or administrators.] In witness *whereof the parties above named have hereunto set their hands and seals (*d*), the —— day of ——, 18—.

ENLARGEMENT OF TIME BY PARTIES.

Witness (*e*),

(*d*) *Vide ante*, p. 634, (*a*). It seems that the heirs of the parties cannot be bound by an award made during the enlarged time, unless the indorsement be made under hand and seal. For the heir must be expressly named in a writing under hand and seal, otherwise he is not chargeable. Bac. Abr. Gwill. ed. 458, *Heir*, &c. (F). *Vide ante*, Vol. 1, p. 584. But for that purpose, it is not requisite that the writing should be delivered as a deed, *Gifford* v. *Manley*, Cas. Temp. Talb. 109, and therefore a deed stamp is not necessary.

Unless the heir be named in a writing under hand and seal, he is not bound.

(*e*) *Vide ante*, p. 632, (*e*).

Stamp.

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Notice *to produce Papers, &c.*

NOTICE TO PRODUCE PAPERS, &c.

In the Arbitration,

Between { [*obligor*] and [*obligee*].

I DO hereby give you notice to produce before [*arbitrators*], of, &c., to whom all matters in difference between the above named parties have been referred, to-morrow morning at eleven o'clock, at the sign of the ——, in ——, in the said county of ——, (*or* at the chambers of the said [*arbitrator*], situate in Holborn Court, in Gray's Inn, aforesaid,) all books, deeds, papers, writings, letters, vouchers, or other documents whatsoever, relating to the matters in difference between the said parties so referred as aforesaid, now in your custody, power, or possession,

NOTICE TO PRODUCE PAPERS, &c.

and especially a certain indenture, bearing date on or about the —— day of ——, 18—, and made between, &c., whereby the said, &c., agreed to become co-partners in trade for the term of —— years. DATED the —— day of ——, 18—.

[*attorney*]
Attorney for [*obligee*].

To Mr. [*obligor*], or Mr. [*attorney*], his attorney.

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WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

WARRANT OF ATTORNEY *to confess* JUDGMENT.

In some cases it may be prudent to take a warrant of attorney to confess judgment for a specific sum, as a further security for performance of an award, with a defeazance.

IN some extraordinary cases it may be prudent to take a warrant of attorney to confess judgment for a specific sum, as a further security for the performance of an award, in order that execution may be immediately taken out, either against the property or the person of him who neglects or refuses to perform the award. See the FORM, *ante*, p. 345; and see the difference between the effect of an attachment and a judgment, *ante*, p. 609. The defeazance should contain the substance and effect of the bond or agreement, with a declaration that no execution shall issue until nonperformance of the award; and if it should be likely that the time appointed for performance of the award might be beyond a year, from the time of entering up judgment, a proviso dispensing with the necessity of reviving the judgment may be inserted, *ut ante*, Vol. 1, p. 558.

So in some cases it may be prudent to take a warrant of attorney to confess judgment in ejectment;

So when the dispute is concerning the title to lands, and it is probable that the party in possession will be directed by the award to deliver the possession to the other party, it may be prudent to take a warrant of attorney to confess judgment in ejectment. For although a defendant be apprehended on an attachment for nonperformance of an award, by not yielding possession of lands in pursuance of the award, yet if he continues obstinate, an ejectment is necessary to recover the possession. *Bayley* v. *Bayley*, before Mr. Justice Park, Leicester Spring Assizes,

1823. *Vide Doe* ex dem. *Greville* v. *Roper*, Woodfall's Landlord and Tenant. 420, 3d edit. *et infra.* The trouble, expense and delay of that proceeding would be prevented by means of a WARRANT OF ATTORNEY TO CONFESS JUDGMENT IN EJECTMENT. [For the Form of such a Warrant of Attorney by a mortgagor to a mortgagee, *vide post*, Vol. 5, p. 530, and] see INDEX TO THE PRECEDENTS, title WARRANT OF ATTORNEY. The defeazance should be, that no execution shall be taken out, unless the arbitrator should, by his award, direct the defendant to yield the possession, and he should neglect so to do on or before the day appointed by the award; and if the circumstances of the case seem likely to require it, there may be inserted a proviso dispensing with the necessity of reviving the judgment. [As to such agreements, *vide ante*, p. 355 *a.*]

WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

with a defeazance.

ASSENT.

ASSENT BY EXECUTOR TO A BEQUEST, AND ASSIGNMENT TO LEGATEE.

ASSENT (*a*) *to a* BEQUEST *of a* TERM FOR YEARS, *either by One Executor, or several Executors, or by a Married Executrix and her Husband; and either by Indenture, Deed-Poll, or by an unstamped Writing under Hand only: and either with or without an* ASSIGNMENT *from the Executors to the Legatee.*

THIS INDENTURE, made the —— day of ——, in the year of our Lord, 18—; BETWEEN [*executors*], of, &c.

Parties.

Recital of lease for years.

As the whole legal interest in a testator's personal estate vests in the executor, nothing passes to the legatee without the executor's assent.

(*a*) Although a testator bequeathes his personal estate, either specifically, or as part of the residue, yet the legal interest in the whole is vested in the executor by operation of law. However, in equity, the executor takes the personal estate in the nature of a trustee, in relation to such persons as have any claim on it. But nothing passes to the legatee, nor can a legatee take any thing bequeathed to him without the executor's assent either express or implied. And therefore the legatee of a chattel real must aver in pleading, that he entered into the land with the consent of the executor. *Mathew* v. *Herle*, Sty. 65. Co. Litt. 111 a. *Lampet's case*, 10 Co. 52 b. *Bolle* v. *Nyseham*, Dyer, 254 b. (1). *Northey* v. *Northey*, 2 Atk. 77. *Day* v. *Trig*, 1 P. Wms. 287. Perk. s. 488, 570, 572. 1 Swinb. 37, 38, 375, Powell's edit. Wentw. Off. Ex. 27, 226, Wilson's edit. Godolph. Orphan's Legacy, 148. Gilb. Dev. 132, 3d edit. Ritso, 177. Wms. n. 1 Saund. 279, (5). Finch's Law, 172, Pickering's edit. And in the mean time until assent, the right of disposition is in the executor, and he may make a good title even against the legatee, except the sale be fraudulent. *Vide ante*, Vol. 1, p. 622, and *post*, note to the third ASSIGNMENT, title PURCHASE.

Before assent, the executor may make a good title, even against the legatee;

After assent the legal title to a term bequeathed vests in the legatee; *Adams* v. *Peirce*, 3 P. Wms. 12; and he may maintain an ejectment against the executor, *Doe* dem. *Saye* and *Sele* v. *Guy*, 3 East, 120, or against any other person, to recover the possession; *Bastard* v. *Stukeley*

ASSENT BY EXECUTOR TO A BEQUEST, AND ASSIGNMENT TO LEGATEE.

* of the one part, and [*legatee*], of, &c. of the other part. WHEREAS by indenture of lease bearing date on or about

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3 Keb. 440; S.C. Sir T. Jones, 130; 2 Lev. 209; 2 Show. 50; 2 P. Wms. 533.

In transactions which took place at a remote period, the rule is, *ex diuturnitate temporis omnia præsumuntur solemniter esse acta;* Co. Litt. 6 a; 2 Inst. 118, 362; and therefore a title depending either on an assignment by an executor, or by a legatee without any express evidence of an assent, is accepted without any difficulty. But in transactions of a recent date, the caution is generally adopted, of having the concurrence of the legatee and the executor in the assignment: of the legatee, to obtain his admission that there has been no previous assent to the bequest, and that the term still remains in the executor: and of the executor, to pass the term in that character. When the assignment is from the legatee alone, it is particularly important to have some evidence of the executor's assent to the legacy; and in general, the consent of the executor, or other personal representative, is required to be testified by his concurrence in the deed of assignment, and by a confirmation thereof. To obviate the necessity of such concurrence, it is, as a point of practice, advisable that every legatee of a term for years should have an express assignment from the executor, or at least an instrument declaring his assent to the legacy. 3 Pres. Abs. 145.†

after assent the legal title to a term vests in the legatee, and he may maintain an ejectment to recover the possession.

In remote transactions, a title through an executor or a legatee, without assent, is accepted.

But in recent transactions, the concurrence of both is generally required.

To render the executor's concurrence in a future sale unnecessary, such a deed as the above is advisable.

But assent is only a perfecting act, for it is the will of the testator which gives the interest to the legatee, and therefore the law does not require any exact form in which it is to be made. Hence any expression or act done by the executor which shows his concurrence or agreement to the thing bequeathed, will amount to an assent. 4 Bac. Abr. Gwill. ed. 444, *Legacies* (L); *Noel* v. *Robinson*, 1 Vern. 94. For the executor's assent being analogous to a tenant's attornment to the grant of a reversion, a small matter will be construed an assent; Wentw. Off. Ex. 226; *Noell* v. *Robinson*, 2 Ventr. 358; and whatever verbal agreement will amount to an attornment, may constitute an assent to a legacy; Shep. Touchs. 456; Godolph. Orphan's Legacy, 144; Wentw. Off. Ex. 224. Expressions to the following effect have been adjudged to amount to an assent:—"God send you joy of your bequest."—"I intend you to have your legacy according to the devise." The executor's allowing the legatee of a term to receive the rents for a time only, or applying the rents for the devisee's maintenance during minority, when they were directed to be so applied by the will, has been considered an implied assent; *Colbourne* v. *Mixstone*, 1 Leon. 129; *Paramour* v. *Yardley*, Plowd. Com. 539; 1 Rop. Leg. 251, 2nd ed.

Any expression or act which shows the executor's concurrence, or agreement, will amount to an assent.

[† See the form upon bond given by a legatee on having such an assignment, *post*, Vol. 3, p. 382.]

ASSENT BY EXECUTOR TO A BEQUEST, AND ASSIGNMENT TO LEGATEE.

the —— day of —— 18—, and made or expressed to be made between [*lessor*], of, &c. of the one part, and [*lessee*],

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The assent should always be in writing; but a deed is not requisite.

It is always advisable to have the assent in writing, on account of the difficulty necessarily attending the proof of a parol assent. But an assignment by the executors is not requisite; nor is it necessary that the assent should be made by deed. As an assent, a mere writing under hand will be as effectual as a writing under hand and seal, or as an indenture. And if it be made under hand and seal, and not delivered as a deed, a stamp does not appear to be necessary; *vide ante*, p. 401, 588, (*d*); 633. Supposing it be made under hand, or under hand and seal only, the form may be thus,

UNSTAMPED ASSENT TO A BEQUEST OF A LEASEHOLD ESTATE.

Testatum.

"TO ALL TO WHOM THESE PRESENTS SHALL COME, [*executor*], of, &c. *sendeth greeting.* WHEREAS by indenture, &c. *(recite the lease; the testator's death; the probate of his will; the bequest of the leasehold estate; and that at the legatee's desire, the executor hath agreed to assent to the bequest.)* NOW KNOW YE, that in pursuance of the said agreement, *He* the said [*executor*] doth by these presents declare his assent and consent to the bequest of the said dwelling-house and garden, with the appurtenances, so made by the said [*testator*] to the said [*legatee*], as aforesaid. IN WITNESS whereof, the said [*executor*] hath hereto set his hand (and seal) the —— day of —— 18—.

WITNESS."

An assent by indenture may prevent frivolous objections.

But where the stamp is not an object, it may perhaps be prudent to have an indenture, in order to prevent an objection to the title, although that objection would be groundless.

An executor may, before probate, assent to a legacy, assign a term, or release an action of a debt,

commence an action,

or file a bill;

but he must obtain probate before filing the declaration at

An executor may assent to a legacy, Godolph. Orph. Leg. 144; Dyer, 367 a, (39), assign a term, or release an action, as well as a debt, before probate; *Middleton's case*, 5 Co. 28 a; *Hudson* v. *Hudson*, 1 Atk. 461; and in short, is complete executor before probate, for all purposes, excepting that he cannot declare in an action before probate; for without producing his letters testamentary, he cannot assert his right in court; but he may commence an action at law; Bacon's Law Tracts, 160; 1 Salk. 303; 4 Burn's Eccles. Law, 6th ed., 246; or file a bill in equity before probate; *Humphreys* v. *Humphreys*, 3 P. Wms. 351; and when produced, it shall have relation to the time of suing out the writ, or filing the bill; and on a bill in equity, it is sufficient, if the probate be obtained at any time before the hearing. 3 Bac. Abr. 53; Toll. Ex.

of, &c. of the other part; for the considerations therein mentioned, the said [*lessor*] *did* demise and lease unto

ASSENT BY EXECUTOR TO A BEQUEST, AND ASSIGNMENT TO LEGATEE.

46; Com. Dig. *Administration*, (B. 9). And although an executor may assent to a legacy or assign a time before probate, yet the assent or assignment cannot be given in evidence as an assent or assignment by the executor, without showing letters of probate of the will, in proof of his being the executor; for the courts of law or of equity cannot receive a will in evidence in respect of personal estate, until it has been sanctioned by the ecclesiastical judge; and the letters of probate and the commission of administration are the only legal proofs of such sanction. Thus, till letters of probate are obtained, there is a good assent or assignment for all the purposes of title, but there is not any legal evidence to prove the right to make such assent or assignment. See 1 Cru. Dig. 264, s. 32. As soon as the will has been sanctioned by the ecclesiastical judge, then the defect of evidence is supplied, and there is a good title in point of fact and of law, and the relevant and proper evidence to support that fact. The doctrine that an executor may assign or release before probate, has frequently led to the conclusion, that a title would be good without obtaining letters of probate; (see Dyer, 367 a, (39);) and vendors have resisted the right of a purchaser to require the will should be proved. It seems clear, beyond all doubt, that in transactions of a recent date, the purchaser is entitled to require that the will should be proved; but there are many cases in which a purchaser may forego his strict right without any risk to his title. The will may be proved at any time, and even after the death of an executor; and whenever the will shall be proved, the assent or assignment will be admissible in evidence, and establish the deduction of the title from the executor. 3 Pres. Abs. 146.

law, or the hearing in equity.

Before an assent or assignment can be given in evidence, probate must be obtained.

Previously to probate, there is a good title, but no evidence to support it.

In recent transactions, a purchaser is entitled to require the will to be proved.

The will may be proved after the executor's death.

Where there are two or more executors, the assent of any one or more of them is sufficient; Went. Off. Ex. 225; *Holkirk* v. *Holkirk*, 4 Madd. 51; and in case of the death of either of them the power survives. *Flanders* v. *Clarke*, 3 Atk. 510. And if a legacy be given to one executor, he may assent to the bequest without the concurrence of his co-executors, and retain the legacy; *Townson* v. *Tickell*, 3 B. & A. 40; and according to Perkins, even before probate or administration. Perk. s. 572.

The assent of one of several executors is sufficient;

and one of them may assent to his own bequest.

If an executor once assent to a legacy, he can never afterwards retract; and notwithstanding a subsequent dissent, a specific legatee has a right to take the legacy. Went. Off. Ex. 227; *Mead* v. *Lord Orrery*, 3 Atk. 238. Nor can executors assent to legacies *conditionally*, except the condition be *precedent* to the assent; Wentw. Off. Ex. 238; nor subject to revocation; for in each case the assent will be considered

An executor cannot revoke an assent; nor assent conditionally, unless it be precedent.

ASSENT BY EXECUTOR TO A BEQUEST, AND ASSIGNMENT TO LEGATEE.

the said [*lessee*], ALL THAT dwelling-house and garden situate and being on the —— side of —— street, at ——

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good and absolute. Thus, if the bequest were of goods, and the executor delivered them to the legatee to redeliver at a subsequent period; the delivery would be a good assent, and the direction of redelivery, void. *Colbourne* v. *Mixstone*, 1 Leon. 130. 4 Co. 28 b.; Com Dig. *Administration*, (C. 8).

An assent to one having a partial interest in a bequest, is an assent to the others.

Where a legacy is limited to several persons in the nature of remainders by executory devise, the executor's assent to the first taker will be considered an assent to those who are to succeed; and *è converso*, his assent to one of the subsequent takers will enure to the benefit of the persons who take prior interests in the property bequeathed; and the reason is, because the several interests of the legatees constitute in the whole but one estate. If, therefore, a term for years were devised to *A.* for life or years, or for so long as *A.* continued unmarried, with remainder to *B.*, and the executor assented to the interest of *A.*, such assent would extend to *B.* so as to vest also his interest; in like manner if the assent had been given to *B.* it would have enured to *A.* Bro. Abr. *Devise*, pl. 13; *Welcden* v. *Elkington*, Plowd. Com. 519; Com. Dig. *Administration*, (C. 6); Godolph. Orph. Leg. 145. 148; Wentw. Off. Ex. 236; *Adams* v. *Peirce*, 3 P. Wms. 12; *Vide ante*, Vol. 1, p. 622. So if a term be bequeathed to the executor for life, he paying 50*l.* to *A. B.*; remainder to *C. D.*—proof of the executor having paid the 50*l.* to *A. B.* is a sufficient assent to the bequest in remainder to *C. D.*; and he may, upon that assent, maintain an ejectment to recover the term, after the executor's death, *Young* v. *Holmes*, 1 Str. 70. [*Vide post*, Vol. 4, p. 324.]

A married executrix cannot assent to a bequest, without her husband's permission.

It seems to have been formerly matter of doubt, whether a *married woman*, appointed executrix, was competent to assent to a legacy without the privity and concurrence of her husband: the doubt, however, appears to have been removed by the decision in *Russel's case*, 5 Co. 27 b, according to which, as she is adjudged incapable of releasing a legacy without her husband, on account of the injury he might sustain; so her assent to a legacy without his permission must be nugatory and ineffectual; and of this opinion was the court in the case of *Cookes* v. *Bellamy*, Sid. 188. *Vide ante*, p. 510.

Where an infant is sole executor, administration, with the will annexed, to be granted to the guardian, &c. till the infant is 21;

The 38 Geo. III. c. 87, s. 6, is in the following words, "Whereas inconveniences arise from granting probate to infants under the age of twenty-one;" be it enacted, "that where an infant is sole executor, administration with the will annexed shall be granted to the guardian † of such infant, or to such other person as the spiritual court shall think

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† *Vide*, as to the appointment of a guardian, *ante*, p. 398.

in the county of ——, and then late in the occupation of ——, with the appurtenances: *To hold* the same unto the

ASSENT BY EXECUTOR TO A BEQUEST, AND ASSIGNMENT TO LEGATEE.

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fit, until such infant shall have attained the full age of twenty-one years, at which period, and not before, probate of the will shall be granted to him." Sect. 7. "And be it enacted, That the person to whom such administration shall be granted, shall have the same powers vested in him as an administrator now hath by virtue of an administration granted to him *durante minore ætate* of the next of kin." Therefore, as it was so held before the act, it seems also that now an administrator *durante minore ætate* of an infant, cannot assent to a legacy unless there be sufficient assets to pay debts, &c., for he cannot do any thing to the prejudice of the infant; such administrator being merely appointed for the infant's benefit. *Prince's case*, 5 Co. 29 b. And as it is provided by the act, that the administration is to continue until the infant attains twenty-one, it may be inferred that the infant executor cannot legally give his assent to a legacy before he arrives at maturity. 1 Rop. Leg. 252. See also Wentw. Off. Ex. 217. 3 Bac. Abr. Gwill. ed. 9. *Executors*, (A.) 7. In *Prince's case*, it was held that if a female executor had married a husband of full age, the administration *durante minore ætate* would have ceased, because her husband might administer as executor. *Prince's case*, 5 Co. 29 b. But now, it seems, the administration would continue notwithstanding such a marriage.

who shall have the same power as an administrator *durante minore ætate.*

An administrator *durante minore ætate* cannot assent to a legacy, unless there be assets to pay debts; nor can the infant executor assent till 21.

Administration *durante minore ætate* of a female continues, though she marries a husband of full age.

Executors should not assent to any specific legacy, whether it be an estate for years or an estate *pour autre vie* limited to executors and administrators, until they are satisfied that there are sufficient general assets to pay the testator's debts, without compelling the specific legatees to abate in proportion among themselves. *Duke of Devon* v. *Atkins*, 2 P. Wms. 383. *Long* v. *Sharpe*, 1 P. Wms. 403. Toll. Ex. 340. Shep. Touchs. 455. For although after assent to a specific bequest, the legatee must in a court of equity refund in favour of creditors where the assets are deficient, 2 Bla. Com. 513; Toller on Executors, 339, yet the executor himself, after his voluntary assent, can neither avoid the assent nor recover the legacy, unless a deficiency be afterwards created by debts, which did not appear until after his assent to the legacy. *Davis* v. *Davis*, 8 Vin. Abr. 423, pl. 35. 4 Bac. Abr. Gwill. ed. 428. Toll. Ex. 342. Powell's n. 1 Swinb. on Wills, 40. 2 Fonbl. Treat. Equity, 375, 5th ed. But if after a voluntary assent to a bequest of a term for years the legatee sell the term to a third person *bonâ fide*, the sale will defeat the claim of the creditors on it; for the legatee has a good title in law, and the purchaser shall not be prejudiced by the trust for the creditors. *Chamberlain* v. *Chamberlain*, 1 Chan. Cas. 257.

Executors should not assent to a specific legacy until they are satisfied they have sufficient general assets to pay the debts.

After assent, a legatee cannot retain, as against creditors; but a voluntary assent binds the executor, unless debts subsequently appear.

After assent, and a *bonâ fide* sale, creditors are defeated.

In Ireland, and in register counties in England, it seems not to be

ASSENT BY EXECUTOR TO A BEQUEST, AND ASSIGNMENT TO LEGATEE.

same [*lessee*], his executors, *administrators, and assigns, from the —— day of —— then last past, for the term of —— years: *At* the yearly rent of —— pounds; *And subject* to the covenants, conditions, and agreements therein contained on the part of the said [*lessee*], his executors, administrators, and assigns, to be observed, performed, and kept. *(If the premises were assigned to the testator, recite the assignment,* ut ante, p. 29; *or if there have been several assignments, recite that by divers mesne assignments, &c., and ultimately by indenture, &c., the premises became vested in the testator,* ut ante, p. 47.)

[*643] Recital of testator's death, probate of his will, and bequest of leasehold estate.

AND WHEREAS *the said [*lessee* or *assignee*] died on or about the —— day of —— 18—, having first duly made and published his last will and testament in writing, bearing date on or about the —— day of —— 18—, and on or about the —— day of —— 18—, duly proved by the said [*executors*], the executors thereof, in the Prerogative Court of the Archbishop of Canterbury: *And* the said [*testator*], in and by his said last will and testament (*b*), gave and bequeathed the said dwelling-house and garden,

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Although a will bequeathing a term need not be registered, yet the executor's assent should be.

requisite that the will of a testator possessed of a term for years should be registered. For if the executor be the vendor, no subsequent purchaser can procure a title without notice of the will: Sug. Vend. 5th ed. 406-7; 6th ed. 466: (*sed vide* Toll. Ex. 246, and the Register Acts:) and if a legatee be the vendor, the term did not pass to him by the will; but, as it appears above, by the assent of the executor. However the assent should be invariably registered, in order to prevent a subsequent

[*650] Before completing a purchase depending on assent, &c. search should be made for previous incumbrances by the executor.

valid sale by the executor to a purchaser who has *not received notice of the previous assent. And before completing a purchase depending on the assent, confirmation, or assignment of an executor, the registry should be searched to ascertain that the executor, or if more than one, that none of them, have previously assigned the term. See further as to Registry, *post*, title MEMORIAL. [*Post*, Vol. 5, p. 218.]

(*b*) If it were the case, say,

RESIDUARY BEQUEST.

"after bequeathing several [specific and pecuniary] legacies, gave and bequeathed *All* the rest, residue, and remainder of his (real and) personal estate and effects unto (and equally between) the said [*legatee*], his (*or* [*legatees*], their) heirs, executors, administrators, and assigns."

with the appurtenances, for all the residue of the said term of —— years which he should have to come therein at the time of his decease, unto the said [*legatee*], *his executors, administrators, and assigns. [AND WHEREAS the said [*executors*] have fully paid and discharged, or otherwise satisfied, all the debts, legacies, funeral and testamentary expenses of the said [*testator*].] AND WHEREAS at the desire and for the satisfaction of the said [*legatee*], and for the purpose of affording evidence of the assent of the said [*executors*] to the bequest of the said dwelling-house and garden with the appurtenances, so made by the said [*testator*] to the said [*legatee*] as aforesaid, they the said [*executors*] have agreed to declare such assent by these presents (and also (*c*) to make the assignment or other assurance hereinafter contained). NOW *THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, (and in consideration of the sum of five shillings of lawful money of Great Britain and Ireland to each of them the said [*executors*] paid by the said [*legatee*], at or before the sealing and delivery of these presents; the receipt whereof is hereby acknowledged;) *They* (*d*) the said [*executors*], *have,* and each (and every) of them *hath* assented and consented to the said bequest, (and also bargained, sold, assigned, transferred, and set over, ratified, and confirmed); *And* by these presents *do,* and each (and every) of them *doth* assent and consent to the said bequest (and also bargain, sell, transfer, and set *over ratify, and confirm unto the said [*legatee*], his executors, administrators, and assigns, ALL THAT the said dwelling-house and garden, [and all and singular other the premises mentioned in or demised by the said in part recited indenture of lease, or intended so to be,] with the appurtenances [thereto belonging or in any wise appertaining]; *Together* with the said indenture of lease, [and all the benefit and advantage thereof, and of all and every

ASSENT BY EXECUTOR TO A BEQUEST, AND ASSIGNMENT TO LEGATEE.

[*644]

Recital of full payment of testator's debts, &c.

Recital that at legatee's desire, executor's have agreed to assent to bequest.

[*645]

Testatum.

Assent by executors to a bequest of a term for years, and assignment thereof to the legatee.

[*646]

Parcels,

with lease and assignments;

(*c*) If it be an assent without an assignment, the parts in parentheses should be omitted.

ASSENT ONLY.

(*d*) If the assent be by husband and wife, where she is executrix, *vide ante,* p. 529, 540.

BY MARRIED EXECUTRIX AND HER HUSBAND.

ASSENT BY EXECUTOR TO A BEQUEST, AND ASSIGNMENT TO LEGATEE.

the covenants, clauses, provisoes, and agreements therein contained on the part of the lessor, his heirs and assigns, to be observed or performed;] and the said assignment (*or* all assignments) thereof; AND all the estate, right, *title, interest, term for years, benefit of renewal, property, claim, and demand whatsoever, both at law and in equity, of each and every of them the said [*executors*], of, in, and to the said dwelling-house and garden hereby assigned or otherwise assured, or intended so to be, and every part thereof, with the appurtenances. TO HAVE AND TO HOLD the said dwelling-house and garden, [and all and singular other the premises hereby assigned or otherwise assured, or intended so to be,] with the appurtenances, unto the said [*legatee*], his executors, administrators, and assigns, henceforth, for and during all the rest, residue, and remainder of the said term of —— years [in and by the said *indenture of lease granted, and] now to come and unexpired; *Subject nevertheless* to the rent, covenants, conditions, and agreements, in the said indenture of lease reserved and contained, and which by the lessee, his executors, administrators, and assigns, are and ought to be paid, observed, performed, and kept). AND (*e*) each of them the said [*executors*], severally, separate and apart from the (others and) other of them, doth hereby for himself respectively, and his respective heirs, executors, and *administrators, and as to, for, and concerning only the acts, deeds, and defaults of himself respectively, covenant, declare, and agree with and to the said [*legatee*], his executors, administrators, and assigns, that they the said [*executors*] have not at any time heretofore made, done, executed, committed, or knowingly suffered, or been privy to any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, the said dwelling-house and garden (hereby assigned, or otherwise assured, or intended so to be), or any part thereof, or the said indenture of lease, or the said term of —— years, or any or either of them, or any part thereof respectively, are, is, can, shall, or may be conveyed, assigned,

and all the estate, &c.

[*647]

Habendum.

[*648]

subject to the rents, &c.

Covenant by executors severally, that they have not incumbered.

[*649]

BY ONE EXECUTOR, OR BY FEME EXECUTRIX, AND HER HUSBAND.

(*e*) If the assent be by one executor, see the form of the covenant, *ante*, p. 335; if by husband and wife, where she is executrix, *ante*, p. 531.

impeached, charged, forfeited surrendered, or in any wise incumbered (*f*).

ASSENT BY EXECUTOR TO A BEQUEST, AND ASSIGNMENT TO LEGATEE.

In witness, &c.

Signed, sealed, and delivered, (being first duly stamped (*g*)), in the presence of

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Executor's assent not necessary to a devise in fee, nor to any estate carved out of a fee by the will.

The doctrine of assent by an executor does not extend to a devise of an estate in fee, nor to any estate carved out of a fee by the testator's will. For when a man, seised of an estate in fee, devises the same in fee, in tail, for life, or for years, the devisee may enter without the assent of the executor, because he has nothing to do with the real estate, Co. Litt. 111 a; *Bunker* v. *Cook*, 11 Mod. 126; 8 Vin. Abr. 171, pl. 8.

Estate *pour autre vie*, not limited to heirs, cannot pass by assent.

Nor, it seems, does the doctrine of assent by an executor extend to an estate *pour autre vie*, not limited to heirs; and therefore that a mere assent of the executor will not vest the legal estate in a residuary legatee or the next of kin; but for that purpose there must be a freehold conveyance from the executor or administrator. Noy's Maxims, 115, 9th edit.—*Note by Mr. B.*

COVENANT TO INDEMNIFY EXECUTORS FROM RENT, &c.

(*f*) If the executors are beneficially entitled to the residue of the testator's personal estate, there may be added a covenant from the legatee, to indemnify them from payment of the rent, and performance of the covenants of the lease, as in Assignment of Leaseholds, *post*, title Purchase, *vel ante*, pp. 39. 65. [Whether the executors are beneficially entitled or not, such a covenant seems to be proper, as they are liable to an action to the extent of assets for any breach of the covenants after assent or assignment. *Vide* a precedent of a bond for this purpose, *post*, Vol. 3, p. 382.]

Stamp.

(*g*) If the assent be by indenture, or be delivered as a deed, it will be requisite to have the common deed stamp of *one pound fifteen shillings*, 55 Geo. III. c. 184. *Vide ante*, p. 642.

ASSIGNMENT.

ASSIGNMENT.

For Assignment, see titles, Annuity, Mortgage, Purchase, Settlement, Trusts, and Index to the Precedents, title Assignment.

ATTESTATION.

OF A DEED, WITH RASURES, &c.

ATTESTATION (*a*) *of the Execution of a Deed in which there are* INTERLINEATIONS (*b*), RASURES, *or* OBLITERATIONS.

A deed may be avoided by erasure, or interlineation, by a party interested, after the execution.

(*a*) As to the attestation of deeds generally, *vide ante*, p. 503: as to the attestation of annuity deeds, *ante*, p. 320: and as to the attestation of an appointment by deed or will under a power, *ante*, p. 502, 506.

(*b*) A deed may be avoided by erasure or interlineation by a party interested, after the execution.† In *Pigot's case*, 11 Co. 27 a, it was resolved, that when any deed is altered in a part material, by the plaintiff himself, or by any stranger, without the privity of the obligee, be it by interlineation, addition, rasing, or by drawing of a pen through a line, or through the midst of any material word, that the deed thereby becomes void. As if a bond is to be made to the sheriff for appearance, &c. and in the bond the sheriff's name is omitted, and after the delivery thereof his name is interlined, either by the obligee or a stranger, without his privity, the deed is void. So if one makes a bond of £10, and after the sealing of it, another £10 is added, which makes it £20, the deed is void. So if a bond is rased, by which the original word cannot be seen; or if it is drawn with a pen and ink through the word, although the original word is legible, yet the deed is void, and shall never make an issue, whether it was in any of these cases altered by the obligee himself, or by a stranger without his privity. So if the obligee himself alters the deed by any of the said ways, although it is in words not material, yet the deed is void. But if a stranger, without his privity, alters the deed by any of the said ways, in any part not material, it shall not avoid the deed. 2 Roll. Abr. 29; *vide* Dyer, 261 b, (28); *Master* v. *Miller*, 4 Durnf. & East, 320, 346; Shep. Touch. 68. As to an alteration by a stranger in a material part of a deed, the

[† See also on this point *ante*, Vol. 1, p. 507.]

OF A DEED, WITH RASURES, &c.

* SIGNED, SEALED, AND DELIVERED (*c*) by the within named [*A. B.*] (the words "[*copy of the words interlined*]" having been previously interlined, (*or* written over obliterations,) between (*or* obliterated in) the fourth and fifth lines of the first skin of the within written indenture, (*or* the word "*Henry*" having been previously interlined between the words "*Thomas Johnson,*") and the name —— written on rasures (*or* on a rasure in the tenth line of the second skin thereof), in the presence of

E. F. of Bath, Attorney at Law.
G. H. Clerk to Mr. *F.* (*d*).

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modern doctrine seems more reasonable. Thus in *Henfrey* v. *Bromley*, 6 East, 309, a cause was referred to arbitration, and the umpire was to make his award under his hand, *ready to be delivered* by a certain day; on which day he accordingly awarded the defendant to pay to the plaintiff £57, and signed the award; recommending to the parties, at the same time, by parol, to pay the costs of the reference in equal moieties: and he then put the written award into the hands of his own

An arbitrator cannot alter an award by interlineation after the execution, unless it be to correct an evident mistake.

(*c*) The usual mode of delivering a deed is to take it up and say, "I deliver this as my act and deed."

The usual mode of delivering a deed.

But a deed may be delivered without words; so a deed may be delivered by words, without any act of delivery; as if the writing lies upon the table, and the feoffor says to the feoffee, go and take up the said writing, it is sufficient for you; or, it will serve your turn; or, take it as my deed, or the like words; it is a sufficient delivery. Co. Litt. 36 a. 49 b. *Thoroughgood's case*, 9 Co. 37 a. Shep. Touch. 58. 4 Cru. Dig. 33, 2d edit.

A deed may be delivered with or without words.

[Where a deed is attested to have been "signed, sealed, *and delivered*," it is not necessary in proving its execution that the witness should be able distinctly to recollect the act of delivery: the presumption will be in favour of the execution having been according to the attestation. *Bull* v. *Taylor*, Carr. 417.]

(*d*) If to a valid execution of a power, or otherwise, it be requisite that the residence of the witnesses should be stated, the above attestation would not be sufficient. *Vide ante*, p. 320.

In some cases the residence of the witnesses should be stated.

OF A DEED, WITH RASURES, &c.

attorney, who sent notice immediately to the defendant, that the award was executed and ready for delivery. But on the same day the umpire, having been informed that the defendant refused to pay his share of the costs of the reference, took the award before it was delivered by his attorney, and struck his pen through the £57, (still, however, leaving it legible), and inserted the sum of £66, in order to include the defendant's moiety of the costs; after which he re-signed the award with a dry pen, and such his signature was attested by witnesses, and notice of the award so altered was given to the parties. Lord Ellenborough, in delivering the judgment of the court, said, this was not a mere mistake of the umpire in putting down one sum instead of another, as in casting up an account wrong, or the like; but it was a new and distinct act of judgment, formed by him after his authority was spent, and he was *functus officio*. He only intended originally to give a recommendation to the parties to divide the costs of the reference between them, and not to make it part of his award. Then, when he found that the defendant would not pay his share, he tried to resume his authority again, after he had laid it down; which he could not do. I consider the alteration of the award by the umpire, after his authority was at an end, the same as if it had been made by a stranger, by a mere spoliator. And I still read it with the eyes of the law as if it were an award for £57, such as it originally was. If the alteration had been made by a person who was interested in the award, I should have felt myself pressed by the objection, [on that part of *Pigot's case*, that if any deed is altered in a point material by any stranger, without the privity of the obligee, the deed thereby becomes void]; but I can no more consider this as avoiding the instrument, than if it had been obliterated or cancelled by accident.

An alteration or cancellation of a deed by a stranger, or by accident, does not invalidate it.

An interlineation (if nothing appears to the contrary) will be presumed to have been made before execution.

An interlineation, (if nothing appears to the contrary), will be presumed to have been made before the execution of the deed, and not after. *Trowell* v. *Castle*, 1 Keb. 22. And it has been held, that where the words of a power reserved (as to grant, sell, demise, &c.) are enlarged, by giving a greater power than before, by means of an interlineation; but there is no proof when these words were interlined, or that it was by the direction of the grantor; they must be looked on as if they had been originally incorporated in the body of the deed. Per Reynolds, Chief Baron, *Fitzgerald* v. *Lord Falconbridge*, Fitzgib. 214. 7 Gwill. Bac. Abr. 371, n.†

Modern practice.

The modern practice is, when any alteration, interlineation, or erasure

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Rule contrà as to bills of exchange.

[† In a late case, where an alteration appeared to have been made in a *bill of exchange*, it was held to be incumbent on the person suing upon it to show that the alteration was not improperly made. *Kenman* v. *Dickinson*, 5 Bing. 183.]

is made in a deed, before it is executed, to take notice of it in the attestation. 4 Cru. Dig. 496, 2d edit.

OF A DEED, WITH RASURES, &c.

Where blanks were filled up with the consent of the obligors *after the execution* of a bond, it was held good. *Markham* v. *Gomaston*, Moore, 547. But see *S. C.* Cro. Eliz. 627, held contra. In *Zouch* v. *Claze*, 2 Lev. in debt upon an obligation, the case was thus: *A.* and *B.* delivered the bond to *C.*, and afterwards, by the consent of the parties, the name and addition of *D.* was interlined, and he also sealed the obligation, and delivered it: and if the obligation by this alteration was made void against *A.* and *B.*, or not, was the question; but by Hale, and the whole Court, it was adjudged that it was not; and that it is the obligation of all three; and so is Moor, Rep. pl. 738; although 3 Cro. 626, was before adjudged contrary. But as the case is in 3 Cro. the obligation was altered only by consent of the obligors, in the absence of the obligee, and without his notice, though to his use. But here it is by the consent of all parties. *S. C.* Vent. 185, takes no notice of the consent of the parties, but that upon the delivery by *A.* and *B.* a space was left, in which the name of *C.* was put in, who also sealed and delivered it; and it is there held, that the bond remained the same as to *A.* and *B.*, and they could not take advantage of it; and that it was the usual practice for sheriffs to make the bonds for appearance in this manner. *Vide ante*, Vol. 1, p. 504. As to the case from 2 Lev. 35, Mr. Atherley says, "but *quære*, whether an additional stamp would not be necessary in such a case." Atherley's Shep. Touchs. 68 (*a*); and *vide ante*, Vol. 1, p. 507; Vol. 2, p. 507.

Where alterations were made in a bond with obligors' consent, after execution, yet the bond was held good.

[So where the names of other obligors were added to a bail bond after it had been executed by some of the bail, with the concurrence of the agents of the obligors, and before it had been accepted by the sheriff, it was held that the bond was not rendered void by this alteration, *and that no additional stamp was necessary;* for never having been out of the hands of the obligors, the bond was to be considered at the time of the addition, as in *fieri* only, and in the nature of an escrow. *Matson* v. *Booth*, 5 Mau. & Selw. 223. *Vide also post.*

Additional stamp held not to be necessary on account of alteration.

And it has been decided that the taking off the seal of some of the obligors in a *several* bond and substituting others, does not vitiate it. *Collins* v. *Prosser*, 1 Barn. & Cress. 682. Though, according to several early cases, it is otherwise where the bond is *joint* and *several*. *Seaton* v. *Henson*, 2 Lev. 220. *Nicholls* v. *Haywood*, Dy. 54 a. *Michael* v. *Stockworth*, Cro. El. 120.

Where an addition is made to an instrument of a word, which the court in construing it would have supplied, the alteration does not affect the validity of the instrument.

Addition of immaterial word after execution does not affect the validity of an instrument.

Thus where a bond was given conditioned for the payment of one hundred pounds by instalments, "until the full sum of *one pound*,"

OF A DEED, WITH RASURES, &c.

should be paid; it was held, upon this principle, that the interlineation of the word *hundred* before the word pounds, by a stranger, after the execution, did not avoid the bond, but that the insertion of the word in the declaration was a fatal variance. *Waugh* v. *Russell*, 1 Marsh. 311.

Addition of a christian name after execution held not to be material.

Upon this principle too, it was lately held, that where *A.* as a principal and *B.* as surety, executed a joint and several bond and warrant of attorney to secure an annuity, and it was discovered several days after the execution, that one of the christian names of *B.* was omitted, and such name was then interlined, and the instrument re-executed by *B.* but not by *A.*; the validity of the judgment entered upon this warrant of attorney was not affected by the alteration, inasmuch as it was sufficient and complete without the additional name. *Vide ante*, p. 344. *B.* had also recognized the validity of the judgment by pleading it to an action on the bond. *Coke* v. *Brummell*, 2 J. B. Moore, 495.

The inclination of the courts of the present day is certainly very strong against holding deeds to be void on account of alterations made subsequently to the execution, where no fraud was intended.

So as to blanks supplied with the consent of the executing party.

In the late case of *Hudson* v. *Revett*, 5 Bing. 368, *A.* executed a deed of conveyance and trust for sale for the benefit of his creditors; and the amount of the several debts of the creditors was stated in the deed, with the exception of one, for which a blank was left, and which blank it was agreed should be filled up when certain vouchers in the possession of *A.*, by which its amount was to be ascertained, should be produced. The next day the blank was filled up accordingly on the production of the vouchers. It was contended that this vitiated the deed. Mr. Justice Holroyd, who tried the cause, told the jury that as the blank was filled up in the presence of *A.* according to a previous arrangement, and he had (which was proved to be the fact) afterwards sanctioned the execution of the deed by his wife, and had acted upon it as a valid instrument, there was abundant ground for their considering this as the deed of *A.*; the jury found accordingly, and the court refused to disturb the verdict, considering that if this was not, technically speaking, an escrow, (as to which, *vide post*,) it was a conditional execution of the deed, namely, an execution of it upon condition that something should be done, and when that was done, and not before, the execution was complete. The learned Chief Justice (Best) observed, " I beg not to be taken as deciding, that if a deed be attested with the consent of all the parties, after it is executed, it is not to be considered as a good deed. I think, if we were driven to examine that question, it would be found that, *in these times, whatever might have been thought formerly*, if all the parties assent to the alteration of a deed, it will, in its altered shape, be a good deed; but I do not decide this case on that ground. I decide it on this, that it either was no deed at all, until the sums were written in, and that then the jury were warranted in presuming a delivery to

make it a deed; or if it were a deed, it was delivered only to have operation from the time that those sums were written in, which were to give it all its effect. I think we must take it, from what passed at the time of the execution, it was not to be considered as having effect till it could have its full effect, by all the sums being written in that were to be written in." OF A DEED, WITH RASURES, &c.

In the late case of *Worrall* v. *Jacob*, 3 Mer. 756, a person, after executing a voluntary settlement, which she retained in her possession, interlined a new limitation, and then re-executed it. The court directed the deed to be carried into effect as it originally stood, and no attempt seems to have been made to impeach its validity on the ground of the alteration. Subsequent alteration of deed disregarded.

The execution of a deed is not impeached by the attesting witness saying, that he does not know whether the blanks were filled up at the time, or not. *England* v. *Roper*, 1 Stark. 304. And where it appeared that the description of the trade of one of the parties was struck out after the execution of the deed, it was ruled to be admissible in evidence. *Doe* v. *Hirst*, 3 Stark. 50. As to witness's testimony.

The result upon the whole seems to be, that at the present day no deed would be held to be void on account of any immaterial alteration, by whomsoever made after execution; and with respect even to a material alteration, if it be made with the consent of the parties affected, it forms no objection to the validity of the deed, and in *any* case the invalidity attaches only to the additional matter.] Result of the cases.

AFTER PREVIOUS NOTICE OF RASURES, &c.

*ATTESTATION *of the Execution of a Deed by another Party, where Interlineations, &c. have been noticed in a previous Attestation.*

SIGNED, SEALED, AND DELIVERED, by the within named [*C. D.*] (*a*) (the interlineation and rasure noticed in the attestation of the execution by [*A. B.*] indorsed hereon, having been previously made) in the presence of

J. K., of Exeter, Draper,
G. H. Clerk (*b*) to Mr. *F.*, Solicitor, Bath.

Welch and Scotch married women sometimes execute deeds by their maiden names.

(*a*) In Wales it was formerly customary for married women to execute deeds by their maiden name, although described by their married names in the body of the deed. The practice still continues in many parts of Wales. [And by the laws of Scotland a wife retains her maiden name there, or rather, it would be her name if domiciled there. When a Scotch woman has used her maiden name in England, then it seems proper to describe her in the deed by her married name *A. C.*, and to add, ordinarily using her maiden name of *A. B.*, the wife (or widow of [*R. C.*] The execution may be *A. C.* [*L. S.*], usually calling herself *A. B.—Note by Mr. B.*]

[There is another peculiarity, which sometimes occurs in Welsh titles, which, until explained, raises a difficulty as to the validity of the titles. Formerly, in Wales, and now in many remote parts thereof, the son took his father's christian name for his surname. Thus, Thomas Evans the father, and Evan Thomas the son; that is *ap*, or the son of Thomas. *Note by Mr. B.*]

(*b*) *Vide ante*, p. 653 (*d*).

*ATTESTATION *of the Execution of a Deed by a* BLIND (*a*) PERSON.

OF EXECUTION BY A BLIND PERSON.

THE within written indenture was signed, sealed, and delivered by the within named [*A. B.*], and he being blind, the same indenture was first carefully read (*b*) over to him in the presence of us,

(*a*) A person, whose only infirmity is blindness, may make a valid deed or will, or acknowlege a fine or recovery. *Shulter's case*, 12 Co. 90. Co. Litt. 42 b. Com. Dig. *Capacity*, (C). Jenk. Cent. 222, pl. 75, *ad finem*.

A blind person, having understanding, may make a valid deed or will, or acknowledge a fine or recovery.

(*b*) *Vide post*, p. 659, (*a*). But it has been determined, that it is not necessary to the validity of the execution of a will of lands by a blind man, that it should be read over to him in the presence of the attesting witnesses. *Longchamp* d. *Goodfellow* v. *Fish*, 2 Bos. & Pull. N. R. 415. See also *Sir James Duff* v. *The Earl of Fife*, in the House of Lords, July 18, 1823, on an appeal from the court of session in Scotland. MS.

The will of a blind person need not be read in the presence of the witnesses.

[656]

ATTESTATION *of the Execution of a Deed by a Person* DEAF AND DUMB (*c*).

OF EXECUTION BY A DEAF AND DUMB PERSON.

THE within written indenture was signed, sealed, and delivered, by the within-named [*A. B.*], who, being deaf and dumb, but capable of reading, the same indenture was first read (*d*) over by him, and he seemed perfectly to understand *(or, if the witness can so attest,* perfectly understood) the same, in the presence of us,

(*c*) A person born deaf and dumb, is not on that account incapacitated to execute a deed or will, or to acknowledge a fine or recovery,

A person born deaf and dumb is not thereby

(*d*) *Vide post*, p. 659 (*a*).

OF EXECUTION BY A DEAF AND DUMB PERSON.

incapacitated from making a deed or will, or acknowledging a fine or recovery.

if he has sufficient understanding to give evidence of his assent, either by his own signs, or by signs with the assistance of an interpreter. See *Ruston's case*, 1 Leach's Crown Cases, 455. 1 Hale's Pleas of the Crown, 34, Wilson's ed. The learned Dr. Cowel says, one who is deaf and wholly deprived of his hearing, cannot *give;* the same is also to be understood of one who is dumb and cannot speak. Yet (according to the opinion of some) they may consent by signs and nods; but, he adds, it is generally held, that he who is dumb cannot make a gift, because he cannot consent to it. Cowel's Inst. 107, ed. 1651. So Wakering, in his readings at Lincoln's Inn, June, 1626, says, a man deaf and dumb from his birth, is *non compos;* but not, if by accident. Dyer, 55, b. (13). But these opinions cannot be supported; for Perkins, whose authority on conveyancing subjects is very considerable, (see Hargr. n. Co. Litt. 29 a, (5); 50 a, (2); 51 b, (3); 4 Reeve's Hist. English Law, 420, 4th edit.) says, if a man be born dumb, but can hear well, [*657] such a man at full age may make a gift by delivery of his *hands, or by signs; and without delivery of his hands, by signs only. And a man who is born dumb and deaf may make a gift if he have understanding: but it is rare for such a person to have understanding; for a man, to have perfect understanding, ought to hear: yet many persons have understanding by their sight, &c. and therefore a man born dumb and blind may have understanding. Perk. 5 b, H. French edit. 1563. English edit. s. 25. See also Finch's Law, 103, Pickering's edit. And Lord Coke says, a man born deaf, dumb, or blind, so that he hath understanding and sound memory, albeit he express his intention by signs, may enfeoff, &c. Co. Litt. 42 b. Com. Dig. *Capacity*, (C.) In *Martha Elyot's case*, Carter, 53, Lord Chief Justice Bridgman (the celebrated conveyancer), on a consultation with Archer, Tirrell, and Brown, the other judges, said, "A woman born deaf and dumb comes before me to levy a fine. She and her three sisters have an house and land. An uncle hath maintained her, and taken great care of her, and he is to buy the house and land of them; and he agrees to maintain her if she will pass her land for security. As of her intelligence, the sisters say, she knows and understands the meaning of all this. I demanded what sign she would make for passing away her lands, and as it was interpreted to me, she put her hands that way where the lands lay, and spreads out her hands. It being a business of this nature, and for her own good, I thought fit to communicate it to you. It was so in one *Hill's case*. Hill was born deaf and dumb, and he was brought before Judge Warburton to levy a fine. Judge Warburton would do nothing till he had acquainted his brothers; he examined him, and found him intelligent, and so he took the fine. Justice Archer said, the rule in law is, that in fines and feoffments, &c. if there is a good intelligence, they may do such acts; they may be admitted to make contracts for their good: they

OF EXECUTION BY A DEAF AND DUMB PERSON.

are admitted upon examination to marry, and upon examination to receive the sacrament. They may make contracts for their persons—why not for their lands? I conceive it may be done; and your Lordship may take the fine. To this Tirrell and Brown agreed, and the fine was taken." There are two cases cited by Mr. Cruise, as being to the same effect; namely, "*Griffin* v. *Ferrers*, Barnes, 19. *Keys* v. *Bull*, id. 23." 5 Cru. Dig. 130, 2d edit. and which he thus cites, Cru. on Fines, 105, 2d edit. "Cases of Prac." But after the most diligent search, no such cases can be found.

Many deaf and dumb persons, but more especially those who have received the benefit of the excellent institution in the Kent Road, for instructing the deaf and dumb, can understand what they read or write *as well as if they could hear and speak. Those persons who have [*658] been accustomed to the society of the deaf and dumb, and to an interchange of sentiments with them, cannot entertain any doubt of their capacity to be grantors. But in all cases of this kind, too much care and circumspection cannot be exercised; and therefore it might not be prudent for commissioners, under a *dedimus potestatum*, to take the acknowledgment of a deaf and dumb person to a fine or recovery, without noticing the fact in the caption, and also specially setting it forth in the affidavit of the acknowledgment. See the rule of Court, Hil. Term, 17 Geo. 2. Wilson on Fines, 102, 4th ed. *post*, title FINES. [Vol. 4, p. 145.] In a case that might admit of some doubt as to the capacity, it would be prudent, where the deaf and dumb person is tenant in tail, or a married woman, for the acknowledgment of a fine or recovery to be taken by a judge; and where, in a doubtful case, a deed alone would be a sufficient conveyance, for the deed to be executed in the presence of a judge, in order to give it the authority which must be conferred by such a sanction.

But extraordinary caution should be adopted, where the party is deaf and dumb.

But persons who are born blind, deaf, and dumb, as they have always wanted the common inlets of understanding, are incapable of making either a gift, lease, grant, or a will. Co. Litt. 42 b; Perk. s. 25; Dyer, 56 a, (13); Com. Dig. *Capacity*, (D. 4); 2 Bla. Com. 497. Nor ought such persons to be permitted to acknowledge a fine or recovery. *Mansfield's case*, 12 Co. 124. But if allowed to do it through corruption, and a declaration of the uses be executed by such a person, equity would decree a reconveyance.

A blind, deaf, and dumb person cannot make a gift, lease, grant, or will; and ought not to be permitted to acknowledge a fine or recovery.

EXECUTION OF A DEED BY A MARK.

*ATTESTATION *of the Execution of a Deed by an* ILLITERATE PERSON.

THE within written indenture was signed, sealed, and delivered, by the within named [*A. B.*], the same being previously read (*a*) over to him in the presence of

When a deed is executed by one who is incapable of writing his name, say,

"The mark ⋈ (*b*) and seal [*L. S.*] of *A. B.*"

It seems prudent to state in the attestation, that the deed has been read to an illiterate party.

(*a*) It is not common in practice to vary the usual form of attestation on account of the person executing it being illiterate. But it deserves consideration, whether, in that case, it might not be generally prudent to state in the attestation the fact of having read the deed to the executing party.

For a necessary circumstance to a deed is, that it be read if any of the parties require it; if not, the deed will be void as to the party requiring it to be read. If a person can, he should read it himself; and if he be blind or illiterate, some other should read it for him. If it be read falsely, it will be void, at least for so much as was misread; unless it be agreed, by collusion, that the deed be read falsely, on purpose to make it void; for in such a sase it will bind the fraudulent party. *Mansel's case*, 2 Co. 3; *Thoroughgood's case*, 2 Co. 9 b; *Shulter's case*, 12 Co. 90; *Anon.* Skin. 159; *Bennet* v. *Vade*, 2 Atk. 327; 4 Cru. Dig. 31, 2d ed.; *Vide ante*, 655, (*b*).

Attestation of a devise by a mark is good, within the Statute of Frauds,

or the execution of a will or deed by a mark.

(*b*) In *Harrison* v. *Harrison*, 8 Ves. 185, and in *Addy* v. *Grix*, 8 Ves. 504, it was determined, that an attestation of a devise, where one of the witnesses signed by a mark, was good within the Statute of Frauds, which requires the witnesses to wills of freehold lands to attest and *subscribe* the will. The statute requires the testator to *sign*, and *therefore the principle of these determinations is applicable *a fortiori* to the signature of the testator himself, since the word "subscribe"

seems much more forcibly to point to the actual handwriting, than "sign," which, without any strain upon its literal sense, though, perhaps, not without some sacrifice of its popular and usual acceptation, might be deemed to be satisfied by *any symbol* of the testator's consent and ratification. Roberts on Frauds, 387. The same observation is equally applicable to conveyances under the Statute of Frauds, which are required to be *signed* by the parties making the same. *Vide ante*, p. 503. Indeed, if such a construction should not prevail, the statute would have the extraordinary effect of incapacitating persons, who through illness or illiteracy, could not write, from devising their lands, or conveying them by deed. In country practice, nothing is more common than for persons to sign their deeds and wills by a mark. And many persons may be astonished that it should ever have admitted of "a considerable doubt with the profession, whether, if a testator or witness could not write his name, he might satisfy the statute by making his mark." See *Lemaine* v. *Stanley*, 1 Freem. 538; *Hudson's case*, Skin. 79; *Saunderson* v. *Jackson*, 2 Bos. and Pull. 239; 1 Jarm. Pow. Dev. 80.

EXECUTION OF A DEED BY A MARK.

But it is not prudent to have witnesses who cannot write, on account of the difficulty of making proof of the attestation after their death.

It is better to have witnesses who can write.

EXECUTION BY A WIDOW.

ATTESTATION *of the Execution of a Deed by a Widow after the death of her Husband, where She and her Husband had assigned her reversionary Interest in Trust Monies after the death of another person, and she voluntarily* (*a*) *consented to join with their Assignee in an Assignment to a Second Purchaser.*

THE within written Indenture was signed, sealed, and delivered by the within named [*widow*], the same having been previously read over, and explained to her, and she was clearly and distinctly informed, that by executing the within written Indenture, she voluntarily conveyed her own absolute reversionary interest in the [ ] pounds, within mentioned, without being under any obligation (*b*) so to do, either at law or in equity.

(*a*) *Vide ante*, Vol. 2, p. 80; *post*, Vol. 5, p. 563.

(*b*) If she is the executor or administrator of her husband, under his covenants for title, it seems that she is liable to the extent of assets.

Her assignments, so far as she is not liable, would not be good as against her own creditors.

*ATTESTATION *of a Deed executed under a* POWER OF ATTORNEY.

OF EXECUTION BY ATTORNEY.

SIGNED (*a*), SEALED, AND DELIVERED (*b*), by the within-named [*attorney*], as the attorney (*c*) of the within-named [*principal*], in the presence of ——.

[(*a*) As to the testimonium and signature, see the next form.]

(*b*) The usual mode of delivering a deed by an attorney, is to take it up, and say,

The mode of delivering a deed by an attorney.

"I deliver this as the act and deed of the within named [*principal*]," *vide ante*, p. 653, (*c*).

(*c*) A purchaser has a right to require the vendor himself to surrender the estate, if copyhold, and to execute the conveyance, if freehold; and he cannot be compelled to accept either a surrender or conveyance under a power of attorney, unless an actual necessity appears for it. *Mitchell* v. *Neale*, 2 Ves. sen. 679; *Richards* v. *Barton*, 1 Esp. Ca. 268; and see *ibid.* 115; for it tends to multiply his proofs, and he may be put under difficulties by these means: the letter of attorney may be lost, and the party is obliged to prove the execution of it. See *Johnson* v. *Mason*, 1 Esp. Ca. 89. A letter of attorney may be revoked the next moment; that revocation may be notified to the attorney without the purchaser's knowledge, and then the conveyance would be void; and the purchaser's only remedy would be a suit in equity. Per Lord Hardwicke, in *Mitchell* v. *Neale*, 2 Ves. sen. 681. As to the revocation of a power of attorney, *vide ante*, p. 303, (*n*), [and *post*, Vol. 5, p. 138.]

A purchaser cannot be obliged to accept a conveyance by attorney.

Besides, the vendor may be dead at the time the power is exercised, and in that case the execution would be void, as a power of this nature expires by the death of the principal. *Shipman* v. *Thompson*, *Wynne* v. *Thomas*, Willes, 105, 565; *Wallace* v. *Cooke*, 5 Esp. Ca. 117; *ante*, p. 304. For this reason, where a purchaser choose to permit the conveyance to be executed by attorney, the attorney should execute a decla-

As death of principal revokes the attorney's power, he should declare a trust of the considera-

OF EXECUTION BY ATTORNEY.

tion money for the purchaser, until it appear the vendor was alive at the execution of the deed; or if dead, the estate be conveyed by his heir.

A vendor is not compellable to appoint an attorney to convey an estate, under a covenant to do it on request.

A deed executed by an attorney, is the deed of the principal; but the validity of the deed depends on the power of attorney.

*ration of trust, that he will stand possessed of the purchase money in trust for the purchaser, until it either appear by satisfactory evidence that the vendor was alive at the time of the execution of the deed, or if he shall be dead, until the estate is duly conveyed to the purchaser.

As a purchaser cannot be required to take a conveyance executed by attorney, so, on the other hand, if a vendor only covenant to surrender or convey lands to a purchaser upon request, he is not compellable to appoint an attorney for that purpose. *Symms* v. *Lady Smith*, Cro. Car. 299; Godb. 445; Sugd. Vend. 369, 6th ed.

In the case of a deed creating a power, the seisin or interest to serve the estates is actually raised by the deed itself, and the estates limited under the power accordingly derive their essence from that seisin; but in the case of a common letter of attorney, no seisin is created, nor does the *estate* pass by or by virtue of the power, which merely authorizes the attorney to *convey* the estate in the name of the principal. The conveyance is, in fact, the deed of the principal, and it is considered as executed by him. It is therefore necessary, that the deed should be an operative, independent, and substantive conveyance. If it be a feoffment, it must be accompanied with livery of seisin; if it be a bargain and sale, it must be enrolled; and if it be a release, it must be grounded on a bargain and sale for a year under the statute, or a lease at common law, with actual entry. And the land may consequently be conveyed to one to uses, and the statute will execute the uses. The estates created will depend simply on the instrument in which they are contained, although the deed itself depends for its validity *as a conveyance* upon the letter of attorney, by virtue of which it was executed; for the power must be produced before the deed can be read in a court of justice. *Johnson* v. *Mason*, 1 Esp. Rep. 89; Sugd. Pow. 204, 3rd ed. See also 4 Bac. Abr. Gwill. ed. 140; *Leases* (I), 10.

*ATTESTATION *and* TESTIMONIUM *of a Deed Executed under a* POWER OF ATTORNEY *from* TWO.

Attestation by attorney of two.

THE within-written indenture was signed, sealed, and delivered, by the within-named [*G. H.*], as the attorney of the within-named [*A. B.*] and [*C. D.*], for and in the names, and as the act and deed of the said [*A. B.*] and [*C. D.*], (being first duly stamped (*a*)) in the presence of us ——

Testimonium of attorney of two.

IN WITNESS whereof [*G. H.*], &c. by virtue of a deed-poll, or letter of attorney, under the hands and seals of the said [*A. B.*] and [*C. D.*], bearing date the —— day of ——, 18—, (*b*) and hereunto annexed, hath here-

(*a*) *Vide post*, p. 665 (*a*).

(*b*) If the letter of attorney concern other property, or if it be retained by the attorney, say,

Otherwise.

"a true copy† whereof is hereunto annexed," *ut supra*.

† The following instance (related by Mr. Preston) of one of those frauds which occur in practice, shews the necessity of strictly examining the original power of attorney.

An attorney sold under an authority which conferred a power of leasing, not a power of sale. Several years elapsed before the defect was discovered, and many intermediate conveyances from purchaser to purchaser had taken place. At last the defect was discovered. To give a colour to the title, a formal letter of attorney was prepared to the same person, though he had paid the debt of nature. It was dated prior to the conveyance which the attorney had executed, as if the date would give relation to the authority, so as to effectuate the conveyance already

A fraudulent instance of an attempt to cure a defect in a title by making a power of attorney after the attorney was dead.

OF EXECUTION BY ATTORNEY OF TWO.

unto set the hands and seals of the said [*A. B.*] and [*C. D.*] (*c*), the day and year first above written.

(Signature.)
[*A. B.*] (L. S.) by [*G. H.*] his attorney (*d*).
[*C. D.*] (L. S.) by [*G. H.*] his attorney.

DEED-POLL.

(*c*) If the instrument executed by the attorney be a deed-poll, say, "this —— day of —— 18—."

(*d*) *Vide ante*, Vol. 1, p. 19, 40. A power cannot be executed by an attorney; Vol. 1, p. 19, 20.

made. But the inaccuracy of the transaction was easily detected; first, by the stamp to the letter of attorney; and secondly, by the water mark on the paper, showing the year of its manufacture; and each of these circumstances afforded the means of impeaching the internal evidence of the deed. It is by attempts of this nature that transactions, in which similar fraud has not been practised, are scrutinized with a severity which is the only safeguard against fraud. Mr. Preston adds, were it not disgusting to detail such transactions, another fraud actually committed, and which at this moment is vexatious to a large body of purchasers residing in a village near the metropolis, might be stated as a defence, were any defence necessary, for the strict scrutiny with which titles are investigated. 1 Pres. Abs. 294.

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ANOTHER FORM.

OF EXECUTION BY ATTORNEY.

THIS DEED was signed by [*G. H.*], one of the attornies of his Majesty's Court of King's Bench at Westminster, with the name of the above-named Sir [*A. B.*], and sealed and delivered by him the said [*G. H.*], as the act and deed of the said Sir [*A. B.*], in the presence of us,

(Signature.) [*A. B.*] [*L. S.*]
by [*G. H.*] his attorney, appointed in this behalf by the warrant of attorney written on the other side.

*ATTESTATION *of a Deed executed by one of the Parties in his own Right, and as the Attorney of another of them.*

OF EXECUTION AS A PARTY, AND AS AN ATTORNEY.

THIS WRITING, being first duly stamped (*a*), was signed, sealed, and delivered by the above-named [*A. B.*] with his own name, and as his own act and deed; and afterwards, as the attorney, and with the name, and as the act and deed, of the above-named [*C. D.*], by virtue of the authority given to him the said [*A. B.*] for that purpose, by the indenture of assignment from the said [*C. D.*] to him the said [*A. B.*], and which is recited in this instrument, in the presence of

(*a*) It is not requisite that this should be stated; for the existence of the facts, not the expression of them, is regarded by the law. *Non quod dictum est, sed quod factum est inspicitur.* Co. Litt. 36 a. Besides, it is frequently very difficult to ascertain what are the proper duties to be paid on deeds. And when the witnesses are not of the legal profession, it is making them gravely assert a fact, which they might not have the means of ascertaining.

The attestation need not state that the deed was stamped.

OF EXECUTION BY ATTORNEY OF HUSBAND AND WIFE.

*ATTESTATION *of a Release of a Legacy executed under a Power of Attorney from* HUSBAND AND WIFE (*a*).

THIS WRITING, being first duly stamped, was signed with the several names of the above-named [*A. B.*], and [*C.*] his wife (*a*), and sealed and delivered as their several acts and deeds by the within-named [*G. H.*], their attorney, by virtue of a letter of attorney given to him for that purpose, and dated, &c. in presence of us,

---

A married woman cannot execute a deed by attorney.

(*a*) A married woman cannot execute a deed by letter of attorney. In short, her deed is not regularly a deed. The instrument on which this attestation of her execution by attorney was made, was properly the deed of her husband, it being a release of a legacy to which he was entitled in right. For a woman, on her marriage, virtually devolves all authority on her husband. Therefore, after her marriage, although she herself may do any act relating to her estate which the law allows a married woman to do, yet she cannot constitute an attorney to do it, unless she particularly reserved a power for that purpose before her marriage.

A lease, sealed by husband and wife, and delivered by an attorney, is the lease of the husband only.

If a man declares on a joint lease by baron and feme, and gives in evidence a joint lease, delivered under a power of attorney, this will not maintain the declaration: for the attorney's entry and delivery of the lease by virtue of a warrant of attorney are wholly void. Pres. MSS. As it was only the lease of the husband, being only effectually delivered by him, the plaintiff ought to have declared accordingly. *Wilson* v. *Rich*, Yelv. 1. 1 Brownl. 134. *Phimmer* v. *Hockett*, Noy, 133. *Gardiner* v. *Norman*, Cro. Jac. 617. 4 Bac. Abr. Gwill. ed. 14. *Leases*, (C) 1. A very obscure note, 2 Buls. 13, seems *contrà;* and see *Cooper's case*, 2 Leon. 200. ——— v. *Hopkins*, Cro. Car. 165.

[As to leases by husband and wife, *vide post*, Vol. 4, p. 326, and see Vol. 5, p. 1.]

(This Precedent and the accompanying Note have been added by the present Editor.)

ATTESTATION *of an Instrument intended to operate as an* ESCROW. — of an escrow.

SIGNED, SEALED, AND DELIVERED by the within named [*party*] as an Escrow, and placed in the hands of [*A. B.*] to be delivered up to the within named [*other party*] as the deed of the said [*party*], when the sum of —— pounds, the within mentioned consideration money, shall have been paid by the within named [*other party*] to the said [*A. B.*] as the agent and on the behalf of the said [*party*].

IT is sometimes convenient to execute an instrument as an escrow, or in other words to postpone its operation until some future event or contingency. The proper form of such an execution, according to Sheppard's Touchstone, 58, is as follows:—

Form of delivering an escrow.

"I deliver this to you as an escrow to deliver to the party as my deed, upon condition that he do deliver to you —— pounds for me, or upon condition that he deliver up the old bond he hath of mine for the same money (or as the case is);" "or I deliver this to you as an escrow to keep until such a day, upon condition that if before that day, he to whom the escrow is made shall pay to me —— pounds or give me a horse, or enfeoff me of the manor of Dale, or perform any other condition, that then you shall deliver the escrow to him as my deed."

When an instrument operates as an escrow.

But an adherence to this precise form is not essential in order to the delivery as an escrow, for, in opposition to some of the early authorities, Shep. Touch. 56, Com. Dig. tit. FAIT, A. 3, it is now clear, that even if the instrument be executed as the deed of the party, in the usual manner, yet if it be accompanied by an agreement suspending its operation until some future time or event, this will constitute it an escrow.

Thus, where previously to the execution of a creditors' composition deed, it was agreed, in the presence of the person who covenanted as surety for the payment of the money to be accepted by the creditors, that it should be void unless all the creditors executed it, and the surety then executed the deed in the ordinary way, without using any qualifying expressions at the time of execution, and the deed was then delivered to one of the creditors, in order that he might get it executed by the rest of the creditors: It was held, that this was to be considered a delivery of the instrument as an escrow, and that all the creditors not having executed it, the surety was not bound. *Johnson* v. *Baker*, 4 Barn. & Ald. 440. And see *Degoze* v. *Rowe*, Moore, 300. So in a subsequent case, when it appeared from the evidence of one of the subscribing witnesses to a bond, that it was agreed at the time of the execution that it should remain in his the witness's hands until the death of a third person, and until certain promissory notes in the hands of the obligee should be delivered up, and upon this evidence it was contended that the plaintiff ought to be nonsuited; a verdict was entered for him, with liberty to move to enter a nonsuit. The court granted a new trial, upon the ground that it should have been presented as a question of fact for the jury upon the whole evidence, whether the bond was delivered as a deed to take effect from the moment of such delivery, or whether it was delivered to the witness upon the express condition that it was not to operate as a deed until the events before mentioned. *Murray* v. Earl of *Stair*, 2 Barn. & Cress. 82. See also *Watson* v. *Booth*, 5 M. & S. 223. *Hudson* v. *Revett*, 5 Bing. 368. *Ante*, p. 653 *c*.

Not necessary that a grantor should part with the deed.

It is not essential to the operation of a deed that it should be delivered up by the party executing it to the person for whose benefit it is intended, or to any person on his behalf; for, in many instances, deeds have been held to be binding on the grantor or obligor, though never out of his custody or controul.

Thus in *Barlow* v. *Heneage*, Prec. Cha. 211, George Heneage executed a deed conveying an estate to trustees, upon trust to receive the profits, and put them out for the benefit of his two daughters, and executed a bond to the same trustees conditioned to pay them £1000 at a certain day, in trust for his daughters; but he kept both deed and bond in his own power, and received the profits of the estate till his death: he noticed the bond by his will, and gave legacies to his daughters in full satisfaction of it, but the daughters elected to have the benefit of the deed and bond, and filed a bill in equity accordingly, praying an account, and to have the profits of the settled estate from the date of the settlement, and the £1000, with interest, from the time it became payable. It was objected, that the deed and bond being voluntary, and always kept by the father in his own hands, were to be taken as a cautionary provision only in case of death, and that they ought not to have

profits or interest farther than from the death of the father. Lord Keeper Wright said, that these were the father's deeds, and he could not derogate from them; but the parties agreed to set the maintenance of the daughters against the profits received by the father from the estate; they insisted, however, to have interest on the bond from the time when the money was payable, and it was decreed accordingly.

In *Lady Hudson's case*, cited by Lord Keeper Wright, Prec. Ch. 235, a father being displeased with his son, made a settlement on his wife of £100 per annum, in augmentation of her jointure; and afterwards, being reconciled to his son, cancelled the deed, and so it was found at his death; and, on a trial at law, the deed being proved to have been executed, was adjudged good, though cancelled, and the son having filed a bill in equity to be relieved against the deed, Lord Somers dismissed the bill.

So in *Clavering* v. *Clavering*, 2 Term Rep. 473; *S. C.* Prec. Chan. 235; 1 Bro. Parl. Cas. 122; where *A.*, in 1684, settled an estate upon his eldest son, and in 1690 made a settlement of the same estate upon his second son; he never delivered up or published the settlement of 1684, but had it in his own power, and it was found after his death among his waste papers. A bill was filed by the second son to have the benefit of the settlement of 1690, and to be relieved against the settlement of 1684; but Lord Keeper Wright dismissed the bill, observing, that though the settlement of 1684 was always in the custody or power of Sir James, yet that did not give him a power to resume the estate.

In *Naldred* v. *Gilham*, 1 P. Wms. 577, Mrs. Naldred, in 1707, executed a deed, by which she covenanted to stand seised to the use of herself, remainder to her nephew *A.*, (a child three years old,) in fee. She kept this deed in her possession, but afterwards burnt it and made a new settlement of the premises, by which she limited them to herself for life with remainder to *B.*, another nephew, in fee, and delivered the deed to him. Previously to making the second settlement she consulted with a lawyer about it, who told her she had put it out of her power, whereupon she expressed great concern, saying she had been imposed upon. *A.*'s father having surreptitiously obtained a copy of the former settlement before it was burnt, now filed a bill as the next friend of his infant son, to establish this copy, and to have the second settlement delivered up: and Sir Joseph Jekyll determined, with great clearness, for the plaintiff, and granted a perpetual injunction against the defendant, who claimed under the second settlement. Upon an appeal to Lord Chancellor Parker, his lordship reversed this decree, because it was plain that the aunt intended to keep the estate in her own power; that she designed that there should have been a power of revocation in the settlement; that she thought while she had the deed in her custody, she had also the estate at her command; that, in fact, she had been im-

posed upon, by the deed's being made an absolute conveyance; that the plaintiff, with a title, which, if any, was a legal one, ought not to be assisted in equity. Lord Parker's decision, therefore, is consistent with the position that a deed in general may be valid though it remains under the controul of the party who executes it.

So in the case of *Sear* v. *Ashwell*, 3 Swanst. 411, n., where *A.* being a widower, and contemplating a second marriage, made a settlement to trustees for 500 years in nature of a mortgage, with a condition that if his heirs or executors paid £300 to *R.*, his eldest son, and £200 a-piece to *I.*, his younger son, and *M.*, his daughter, then the term to cease. *A.* married: he afterwards burnt the settlement and made a will. The question was, whether the younger children were entitled to the benefit of the settlement, and the Lord Chancellor held that they were entitled; for that the setlement was good against the testator, and all claiming under him; and *A.* had no power to revoke it. It had been contended "*that being always kept in A.'s own custody*, and never delivered to the trustees, and he having destroyed it, it should not now be set up again; and for this purpose the case of *Naldred* v. *Gilham*, 1 P. Wms. 577, *ante*, p. 666 *c*, was cited; but his lordship thought that that was different; there the settlement was voluntary in every respect, being for the benefit of a person for whom the settlor was not bound to provide; here for children unprovided for.

So in *Boughton* v. *Boughton*, 1 Atkyns, 625, where a voluntary settlement had been made without power of revocation, and the settlor kept it by him, Lord Hardwicke considered it as valid and operative against a subsequent will; and his lordship distinguished the case from *Naldred* v. *Gilham*, which he said was not applicable to every case; but depended upon particular circumstances; and he described Lord Macclesfield as having stated, as the ground of his decree, that he would not establish a copy surreptitiously obtained, but would leave the party to his remedy at law, and that the keeping the deed by her implied an intention of revoking; and his lordship, on another occasion referred to the case in nearly the same terms. See *Bolton* v. *Bolton*, 3 Swanst. 415, n.

In the case of *Attorney General* v. *Jones*, 3 Pri. 360, indeed, the intention of an instrument of settlement by the donor was made one of the grounds for holding it to be testamentary, so as to subject a sum of money directed to be raised under the trusts of it to the legacy duty: but the case may be considered as *sui generis*, and the arguments of Mr. Baron Wood, who dissented from the judgment, have generally been considered as having more weight than those by which the judgment was supported. (See some observations upon this case, 1 Jarm. Pow. Dev. 12.)

The doctrine that a deed will operate though it is not parted with by

the person who executed it, was recognized in the late cases of *Worrall* v. *Jacob*, 3 Mer. 256, *ante*, p. 653 *d*, and *Doe* d. *Garnons* v. *Knight*, 5 Barn. & Cress. 671; *S. C.* 8 Dowl. & Ryl. 348. In the latter case, however, the mortgage, the validity of which was in dispute, had been delivered by the debtor to his sister, who lived in an adjoining house, expressly for the use of the creditor, though the latter was ignorant of the circumstance, and the sister was not aware of the contents of the parcel which inclosed the deed.

A deed, generally speaking, takes effect from the delivery and not from the date, and the fact of the date being impossible, as the 30th of February, does not affect its validity: but when a reference is made to the date for the purpose of computing time; as where a person covenants to pay a sum of money within a certain period from the date, or a term is granted from the date, the computation will be made from the day the instrument bears date, (assuming the date to be a possible one,) and not from the day of its actual execution. *Styles* v. *Wardle*, 4 B. & C. 908. This case decides the point suggested, *post*, Vol. 4, p. 125.

APPROBATION (*a*) *by the Principal, indorsed on a Deed subsequent to its Execution by an Attorney.*

APPROBATION OF A DEED EXECUTED BY ATTORNEY.

I HEREBY declare my approbation of the within written indenture, in testimony that I was living at the time of the date and execution thereof, and that the same was executed by the within-named [*G. H.*], as my attorney, by virtue of a power of attorney from me for that purpose. WITNESS my hand this —— day of ——, in the year of our Lord 18—.

WITNESS,

For the ATTESTATION OF WILLS, see WILLS.

OF WILLS.

(*a*) See the subsequent approbation by a lessor, of an agreement for a lease made by an agent or attorney, *ante*, Vol. 1, p. 40.

ATTORNMENT.

Attornment was necessary to a grant at common law.

An attornment at the common law was an agreement of the tenant to the grant of the seignory, or of a rent; or of the donee in tail, or tenant for life, or years, to a grant of a reversion or of a remainder made to another. Co. Litt. 309 a; Shep. Touchs. 253; 2 Bla. Com. 288. And this yielding of consent was necessary to the perfection of the grant. However, the necessity of attornment was in some measure avoided by the Statute of Uses; as, by that statute, the possession was immediately executed to the use; *Birch* v. *Wright*, 1 Durnf. & East, 384; (as to rents, *vide ante*, Vol. 1, p. 603,) and by the Statute of Wills, by which the legal estate is immediately vested in the devisee. Yet attornment continued after this to be necessary in many cases. But both the necessity and efficacy of attornments have been almost totally taken away by the statutes 4 & 5 Anne, c. 16, s. 9 & 10, and 11 Geo. 2, c. 19, s. 11. Till the passing of these statutes the doctrine of attornment was one of the most copious and abstruse points of the law. Butl. n. Co. Litt. 309 a, (1), *ad finem*. But by the former of those statutes it was enacted, "that all grants or conveyances, by fine or otherwise, of any manors or rents, or of the reversion or remainder of any messuages or lands, shall be good and effectual to all intents and purposes, without any attornment of the tenants of any such manors, or of the land out of which such rent shall be issuing, or of the particular tenants upon whose particular estates any such reversions or remainders shall be expectant or depending, as if their attornment had been had and made: *provided*, that no such tenant shall be prejudiced or damaged by payment of any rent to any such grantor, or conusor, or by breach of any condition for non-payment of rent, before notice shall be given to him of such grant by the conusee or grantee." *Ante*, Vol. 1, p. 602-3. By the latter statute it was enacted, "that the attornments of tenants to strangers claiming title to the estate of their landlords, shall be absolutely null and void to all intents and purposes whatsoever, and that the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed

The necessity and efficacy of attornments have been almost wholly taken away.

or construed to be in anywise changed, altered, or affected by any such attornment or attornments: *provided*, that nothing herein contained shall extend to vacate, or affect any attornment made pursuant to, and *in consequence of some judgment at law, or decree or order of a court [*669] of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee after the mortgage is become forfeited." The first statute having made attornment unnecessary, and the other having made it inoperative as against the landlord, when wrongfully made, it is now held not to be necessary either to aver it in a declaration in covenant, or plead it in an avowry or other pleading whatever, in which the grantee makes title to the reversion. *Birch* v. *Wright*, 1 Durnf. & East, 386; *Moss* v. *Gallimore*, Dougl. 283; Wms. n. 1 Saund. 234 a, (4), 241 b; 1 Chitty on Pleading, 11, 3d ed.

But still, attornment, when wrongfully made, has an extensive operation. Thus, where a tenant holds the premises of the lessor of the plaintiff, it is sometimes necessary to give him notice to quit possession, in order to maintain an ejectment; yet if the tenant has attorned to some other person, or done some other act disclaiming to hold as tenant, no notice is necessary. *Doe* ex dem. *Foster* v. *Williams*, Cowp. 622; *Throgmorton* v. *Whelpdale*, B. R. Hil. 9 Geo. 3, Bull. N. P. 96; Runnington on Ejectment, 92. 114, edit. 1795. So where a termor attempted to gain the fee by disseisin, and for that purpose assigned the term to a trustee, with a view to protect against forfeiture, and afterwards a feoffment was made and then the trustee of the term executed a declaration, that he would stand possessed of the lands during the term, in trust to attend the inheritance according to the uses created by the feoffment; the Court of King's Bench, in Hilary Term, 1817, on a motion for a new trial, treated the term as *forfeited*. There was abundance of principle and even of decision to lead to that conclusion:—in the first place, it is a fraud on the part of the termor, to attempt to gain the freehold. Secondly, the admission by the assignee of a title in the feoffee to the reversion, is an *attornment* to a stranger; and by the rules of the common law, attornment by a termor to a stranger is an abandonment of the tenancy, and a destruction of the privity between the termor and the reversioner, and a forfeiture of the term. 2 Pres. Conv. note at the end of Preface, 2d ed.; *Saunders* v. *Lord Annesley*, 2 Scho. and Lef. 73; *Ibid.* 434; *Hovendon* v. *Lord Annesley*, 2 Scho. and Lef. 625; Gilb. Uses, 89. See 2 Pres. Watk. Conv. 216; 2 Sand. Uses, 14, 16, 22, 3d ed.; Sug. Vend. 253, 5th ed.; 262, 6th ed.; *Cholmondeley* v. *Clinton*, 2 Meriv. 238; *Kelly* v. *Power*, 2 Ball and Bea. 245.

But attornment, when wrongfully made, is a forfeiture.

The reason for attornment, so far as it proceeded on notice to the tenant, still exists. For a mortgagee is not entitled to the rents under a lease made prior to the mortgage, until he has given notice of the mortgage to the tenant, and required payment of the rents to himself;

The reason for attornment, so far as it proceeded on notice to the tenant, still exists.

*after which notice the mortgagee will be entitled to all the unpaid rents in the tenant's hands, and for which the mortgagee may either maintain an action, or distrain, without bringing an ejectment. *Moss* v. *Gallimore*, Dougl. 282. The same doctrine extends to a purchaser of the reversion; *Lumley* v. *Hodgson*, 16 East, 99; or to a person having the legal reversion, in trust for securing an annuity; *Birch* v. *Wright*, 1 Durnf. & East, 385; *ante*, Vol. 1, p. 566, 615; Vol. 2, p. 273, 309 (b), 425 (*k*). Although it is not strictly necessary, yet in order to afford evidence of the tenant's admission of the notice, he sometimes signs an acknowledgment of attornment, and sometimes he attorns without any notice. A mortgagee may, without giving notice to quit, recover in ejectment against a tenant who claims under a lease from the mortgagor granted after the mortgage, without the privity of the mortgagee; *Keech* v. *Hall*, 1 Dougl. 21. But if in such a case the mortgagee does not wish to disturb the possession of the lessee, sometimes the lessee attorns to the mortgagee at the rent reserved by the lease, in order to create a tenancy with the mortgagee, and to enable him to distrain for the rent. For without attornment it seems that in such a case the mortgagee could not distrain. [See Vol. 4, p. 350. But in a late case the Court of King's Bench held, in opposition to the case of *Alchorne* v. *Gomme*, 2 Bing. 54, and the opinion that had obtained in the profession on this subject, that a mortgagee was entitled to distrain on a tenant, whose lease was granted by the mortgagor subsequently to the mortgage, without attornment. *Garbett* v. ——. Sittings before Easter Term, 1829, (referred to *post*, vol. 5. p. 386).] So where the mortgagor himself is in possession, he sometimes attorns and becomes tenant to the mortgagee at a rent equal to the amount of the interest, and sometimes with an addition sufficient to cover the expense of insuring the buildings. For without attornment, or some contract equal to an attornment, at a specific rent, the mortgagor is not such a tenant, see *Partridge* v. *Bere*, 1 Dowl. & Ryl. 272, to the mortgagee that he can distrain; the contract between them being to pay interest, and not to pay rent. *Moss* v. *Gallimore*, 1 Dougl. 282-3. And it is decided, that a mortgagor cannot, without an express contract, be charged with the payment of rent to the mortgagee, nor with a liability to the rent in an action for use and occupation; 2 Pres. Conv. 303. But actual attornment is seldom heard of in practice, except to a receiver (whose appointment by the court is usually accompanied by an order for the attornment of the tenants); or in the case of a recovery in ejectment, where the tenants frequently attorn to the lessor of the plaintiff, in order to save the expense of the sheriff's poundage and officer's fees on executing a writ of possession. Coventry's Pow. Mortg. 174, 302. See further as to attornment, Gilb. Ten. 81; Wright's Ten. 171, 198 (7), 225; Noy's Max. 63; Ritso, 88;

Instances in which tenants sometimes attorn.

As to attornment to a mortgagee.

3 Bac. Abr. Gwill. ed. 387; *Grants* (G); *ante*, Vol. 1, p. 452, 426; Vol. 2, 96; Shep. Touchs. 257; Sugd. Gilb. Uses, 225, 198 (7); *Anon.* Godb. 7, pl. 9; *Adams* v. *Steer*, Cro. Jac. 210; *Daweie* v. *Newdigate*, Dyer, 362 b, pl. 20; *Taylor* v. *Vale*, Cro. Eliz. 166; 2 Sand. Uses, 40, 3rd ed.; *Shove* v. *Pincke*, 5 Durnf. & East, 124, 130.

ATTORNMENT *by several Tenants.*

BY SEVERAL.

WE whose names are hereunder subscribed, *do* hereby severally attorn and become tenants to [*A. E.*], esquire, of the several farms, lands, tenements, and hereditaments, situate at the several places mentioned, and set opposite to our respective names in the schedule hereunder written: *And* do hereby agree to pay such respective rents for the same, and from such several periods or times, as are in the said schedule expressed: *And* we have severally given unto the said [*A. E.*] the sum of one shilling, in the name of attornment, and in part of the said rents.

As WITNESS our hands this —— day of —— 18—.

THE SCHEDULE above referred to.

TENANTS' NAMES	NAMES OF FARMS.	PARISHES.	RENTS.	WHEN DUE.
J. G.	St. Giles.	St. Mary N.	£18, subject to Land Tax.	Lady Day, 1819.
A. S.	South End.	St. B. S.	£80, Land Tax Redeemed.	Michaelmas, 1819.
S. L.	Purley.	St. G. L.	£84 clear.	Lady Day, 1819.

ATTORNMENT BY MORTGAGOR, IN DEED OF RECEIVERSHIP.

*ATTORNMENT *by the* MORTGAGOR *to the Mortgagee, at a specific Rent, added at the end of a Deed of Receivership, where the Mortgagor was in possession of the mortgaged Premises.*

AND for the better and more effectually recovering the interest of the said sum of £2500, in manner aforesaid, by and out of the rents, issues, and profits of the said messuages or tenements, and hereditaments: or so much, and such part or parts thereof as are now in the occupation of the said [*mortgagor*]; he the said [*mortgagor*] *doth* hereby attorn, and become tenant to the said [*mortgagee*], his heirs and assigns of the same premises, at the yearly rent of £125, to be paid half yearly; that is to say; on the twenty-first day of June, and the twenty first day of December in every year, during so long time as the said sum of £2500, or any part thereof, shall remain secured upon the same hereditaments; *But subject nevertheless* to the proviso lastly hereinbefore contained, prohibiting the receiving or collecting of the said rents, issues, and profits, by the said [*receiver*] unless six months' interest shall be in arrear and unpaid to the said [*mortgagee*], his executors, administrators, and assigns. IN WITNESS, &c.

[673]

BY SEVERAL TO TWO MORTGAGEES.

ATTORNMENT *by several Tenants to Two Mortgagees, by the Direction of the Mortgagor; and* AGREEMENT *to pay the Rents to the Mortgagees, or to their Agent.*

WE, whose names are hereunto subscribed, being tenants in possession of several estates within the parish of

BY SEVERAL TO TWO MORTGAGEES.

—— in the county of ——, under [*mortgagor*], of, &c. at the request, with the consent, and by the direction of the said [*mortgagor*], (testified by his signing hereof,) *do* hereby severally attorn, and become tenants for the said estates unto [*two mortgagees*], of, &c. to whom the same are granted in mortgage, for better securing the monies by them advanced, and secured thereupon: *And* we do hereby severally undertake and agree to pay over the several rents for the said premises, when and as often as the same shall respectively become due, unto the said [*two mortgagees*], or unto [*agent*], of, &c. gentleman, the agent appointed by them to receive the same. IN TESTIMONY whereof we have severally paid unto the said [*agent*] the sum of one shilling, in confirmation of the said agreement, and in part of the said rents due and payable from us severally in respect of the said estates. AS WITNESS our hands, the —— day of —— 18—.

WITNESS,

[674]

ATTORNMENT *by a Tenant to a* MORTGAGEE, *after a Judgment in* EJECTMENT.

TO MORTGAGEE, AFTER JUDGMENT IN EJECTMENT.

WHEREAS [*mortgagee*], of, &c. hath lately obtained judgment in an action of ejectment, brought against me, on his own demise, for a cottage or dwelling-house, with the appurtenances, in my possession, situate in the parish of —— in the county of ——, which had been conveyed to him in mortgage, amongst other tenements and hereditaments, by [*mortgagor*], of, &c. Now I do hereby attorn, and become tenant to the said [*mortgagee*], for the said cottage or dwelling-house, with the appurtenances; *And* do hereby promise and agree to pay to the said [*mortgagee*], the yearly rent or sum of £—— for the said cottage or dwelling-house and premises; and to pay the

TO MORTGAGEE, AFTER JUDGMENT IN EJECTMENT.

said rent by two equal half-yearly payments, at Martinmas and Whitsuntide, during so long as I shall hold the same; the first payment to be made at Martinmas next: *And* I have given to the said [*mortgagee*], sixpence, in the name of attornment, and in part of payment of the said rent. As WITNESS my hand the —— day of —— 18—.

WITNESS,

[675]

TO EXECUTORS OF MORTGAGEE, AND COVENANT TO PAY THEM THE RENTS, &c.

ATTORNMENT *by several tenants to the* EXECUTORS *of a* MORTGAGEE *after a Judgment in* EJECTMENT *on their demise; and* COVENANT *by the Tenants severally, to pay the Rents to the Executors; and to deliver the Possession to them on the Expiration of the several leases; and not to pay the Rents, or deliver the Possession to any other Persons, unless compelled so to do by a Court of Law or Equity.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, *The several persons* whose names and seals are hereunto subscribed and affixed *send greeting.* WHEREAS *(recite a mortgage by demise for* 1000 *years from the mortgagor to the mortgagee, for securing* £10,000 *and interest; the parcels being referred to thus:* "being, with the exception of the said manor, the same premises as are mentioned in the schedule to these presents," "with their several rights," &c. *Recite the death of the mortgagee; his will; the appointment of executors, and proof of his will.)* AND WHEREAS in Easter Term last, the said [*three executors*] caused a declaration in ejectment to be delivered, on their demise, to each of the several persons whose names and seals are subscribed and affixed thereto, being the tenants or occupiers of the messuages, farms, lands, and other premises comprised in the said in part recited indenture; to recover possession of the same premises, under the same indenture, and for the residue of the said term thereby

Recital of a mortgage by demise.

Recital of ejectment by executors of mortgagee against tenants;

created: *And* the said [*mortgagor*], (who had due notice of such declarations in ejectment), did not appear thereto, and therefore judgment hath been since entered of record, by default, for the plaintiff in ejectment, or his lessors in the said action. NOW THESE PRESENTS WITNESS, that the several persons whose names are subscribed and seals affixed to these presents, as parties hereto, *have*, and each *and every of them (so far as respects the messuage or messuages, farm, lands, and tenements, mentioned opposite to their respective names in the schedule to these presents, and now in the occupation of himself, or his undertenants, at the yearly rent therein mentioned,) *hath* attorned, and become tenants and tenant; *And* by these presents *do*, and each and every of them *doth*, attorn and become tenants and tenant to the said [*three executors*], for and in respect of the same several messuages, farms, lands, and premises, and every of them (being the messuages, farms, lands, and premises, with the exception of the said manor comprised in the before in part recited indenture): AND in testimony of such attornment, they the said several tenants, parties hereto, have paid to the said [*three executors*], the sum of sixpence each. AND each and every of them the said several persons, parties hereto, doth hereby, for himself, his heirs, executors, and administrators, and so far only as respects his own acts, tenancy, and rent, covenant, promise, and agree with and to the said [*three executors*], their executors, administrators, and assigns, that they the said several persons, parties hereto, and their respective executors and administrators, shall and will henceforth severally pay, or cause to be paid, their respective rents due and payable, and to become due and payable, for their respective farms and tenements set forth in the said schedule, to the said [*three executors*], their executors, administrators, or assigns: AND shall and will, on the several expirations of their respective leases, deliver up the possession of the premises by them held respectively to the said [*three executors*], their executors, administrators, or assigns: AND shall not, nor will pay such rents, or deliver possession of the same farms, or any of them, to any other person or persons, unless compelled by the judgment, order, or de-

TO EXECUTORS OF MORTGAGEE, AND COVENANT TO PAY THEM THE RENTS, &c.

and of judgment for the plaintiff.

Attornment by tenants severally, to the executors of mortgagee.

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Payment in testimony of attornment.

Covenant by tenants severally, to pay rents to executors;

and to deliver possession to the executors on the expiration of the several leases;

And not to pay rents or deliver possession to any other per-

TO EXECUTORS OF MORTGAGEE, AND COVENANT TO PAY THEM THE RENTS, &c.

cree of some court of law or equity, to pay such rents, or deliver up the possession of the same premises to any other person or persons. IN WITNESS whereof the said several persons have hereunto set their hands and seals, the —— day of ——, in the year of our Lord 18—(*a*).

sons, unless compelled so to do by a court of law or equity.

Testimonium.

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(*a*) The learned gentleman who drew the above appointment, said, "The particulars of the estate, and the names of the * tenants, should be added to the attornment, by way of schedule. There is no objection to the attornment, by all the tenants being comprised in one instrument, since it is but one estate, and recovered in the same action."

ATTORNMENT IN EJECTMENT.

ATTORNMENT *of several Tenants to the Lessor of the Plaintiff in* EJECTMENT.

IN THE KING'S BENCH,
(COMMON PLEAS, *or*
EXCHEQUER OF PLEAS.)

John Doe, on the demise of [*A. B.*], Plaintiff,
and
[*C. D.*, &c.], ... Defendant.

BE IT REMEMBERED, that we, whose names are hereunder written, being the several tenants in possession of the premises in question in this cause, situate and being in the parish of ——, in the county of ——, do hereby severally attorn tenants to [*A. B.*], of, &c. the lessor of the plaintiff in this cause, for such parts of the said premises as are in our respective possessions; *And* we, and each and every of us, have this day severally paid to the said [*A. B.*] the sum of one shilling upon such attornment, on account and in part of the rent due, and to

become due from us, severally and respectively, for and in respect of the said premises; *And* we do severally and respectively become tenants thereof to the said [*A. B.*] from the —— day of —— last past. As WITNESS our hands, this —— day of ——, in the year of our Lord 18—.

ATTORNMENT IN EJECTMENT.

C. D.
E. F.
G. H.

WITNESS,
I. K.

[678]

DIRECTION *and* AUTHORITY *from the* ASSIGNEES *of a* BANKRUPT, *to Tenants, to attorn to a* MORTGAGEE *of the Bankrupt.*

DIRECTION FROM ASSIGNEES OF BANKRUPT TO TENANTS, TO ATTORN.

TO *all and every* the tenants of [*bankrupt*], late of, &c. against whom a commission of bankrupt hath been awarded and issued, or the tenants of us, as the assignees of his estate and effects, of *All* and every the messuages or tenements, hereditaments and premises, with the appurtenances, in —— and ——, and elsewhere, in the county of ——, late belonging to the said [*bankrupt*], and now unto us as his assigns. THESE are to require and authorize you, and each and every of you, forthwith to attorn, and become tenants and tenant severally and respectively to [*mortgagee*], of, &c. (to whom the said messuages or tenements, hereditaments and premises, were mortgaged by the said [*bankrupt*],) of and for *All* and singular the said messuages or tenements, hereditaments and premises, by you, each and every, or any of you, holden by lease or otherwise, by, from, or under the said [*bankrupt*], or us as his assignees; *And* to pay unto the said [*mortgagee*], his executors, administrators, or assigns, all rent that shall grow due from you, each and every, or any of you severally and respectively, for the

DIRECTION FROM ASSIGNEES OF BANKRUPT TO TENANTS, TO ATTORN.

premises aforesaid, from the —— day of —— now last past, until you shall have further notice from us in this respect: *And* for your so doing, these presents shall be to you, each and every of you, a sufficient warrant, order, and indemnity. WITNESS our hands and seals, this —— day of ——, 18—.

WITNESS,

To Mr. *N. T.*, Mr. *C. L.*, &c. (*a*).

By including all the tenants in one notice, trouble and expense are saved.

(*a*) The person who serves a duplicate of the above notice on each of the tenants, should make a memorandum on another duplicate, of the time of service. As they are all included in one notice, it will only be requisite to retain one duplicate in order to prove the service. But if separate notices were made for each of the tenants, then to prove the service, the trouble and expense of making duplicates of each notice would be incurred.

[679]

BY DIRECTION ON GRANT OF ANNUITY.

DIRECTION *by a Tenant for Life, to the Tenants, to attorn to a Trustee for securing an* ANNUITY (*b*).

AND for the better and more effectually securing the payment of the said annuity or clear yearly sum of [*annuity*] pounds unto the said [*grantee*], his executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, *She* the said [*grantor*] *doth* hereby direct all and every the present tenants and occupiers of all and every the premises herein before assigned, or intended so to be, to attorn and become tenants to the said [*trustee*]; and

Direction to tenants to attorn.

(*b*) See the attornment by the tenants, to be indorsed on the deed, *post*, p. 680.

BY DIRECTION ON GRANT OF ANNUITY.

henceforth, for and during all such residue and remainder of the terms now to come and unexpired of the same premises, as she the said [*grantee*] shall live, to pay to the said [*trustee*], his executors, administrators, and assigns, as well all arrears of rent now due, as also all their respective yearly rents henceforth to become due and payable; *Nevertheless* upon the trusts, and to and for the several ends, intents, and purposes herein before mentioned, expressed, and declared, of and concerning the same. And she the said [*grantor*] doth hereby declare that the receipts of him the said [*trustee*], his executors, administrators, and assigns, for all and every the said rents, shall be as good and sufficient discharges to all and every the said tenants, for their respective rents, as if the same had been actually given and signed by her the said [*grantor*].

[680]

ATTORNMENT OF TENANTS, INDORSED ON THE DEED.

ATTORNMENT *of the Tenants, to be indorsed on the Deed.*

MEMORANDUM, That on this —— day of ——, 18—, [*A. B.*], [*C. D.*], &c. the tenants and occupiers of the within mentioned premises, by virtue of several leases made unto them by the within-named [*grantor*], having all of them perfect notice of the within written indenture, *did*, in pursuance of the direction therein contained, severally attorn and become tenants of and for their several and respective interests in the premises, to the within named [*trustee*]; *And* each of them the said tenants have given unto the said [*trustee*] sixpence, in the name of attornment, in the presence of

A. B.
C. D., &c.
J. H.
R. W.
} Witnesses.

END OF THE SECOND VOLUME.

LONDON:
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